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Constitutional Convention Bulletins

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LEGISLATIVE REFERENCE BUREAU.

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constitutional convention.*

INTRODUCTION.

By legislation of the Fifty-first General Assembly (1919), Legislative Reference Bureau was charged with the duty of collecting and publishing data for the constitutional convention. Fifteen bulletins collected in this volume represent in part the work done in performance of the duty imposed by statute.

In these bulletins the purpose has been to present facts and to present them impartially, with an analysis of such facts in order to bring out the chief problems which have arisen in this and other states. Appendices to each pamphlet have ordinarily given texts of constitutional provisions adopted in other states. Where a particular type of the institution under discussion has not been embodied in constitutional provisions in other states, drafts have occasionally been printed in order to give in concrete form all the types of such institutions. Such drafts were included are in part intended as suggestions to the convention, or as recommendations of plans which the Legislative Reference Bureau would wish to see adopted, but are merely intended as exhibits of types of institutions not fully covered by constitutional provisions in other states. In order that the complete texts of state constitutions might be available, each delegate to the convention was supplied with a copy of Kettleborough's "The State Constitutions," (Indianapolis, 1918).

Other publications issued by the Bureau supplement these bulletins. In the bulletins no effort is made to review completely the judicial decisions interpreting the constitution of Illinois, because the decisions are fully summed up in a separate volume entitled "Constitution of the State of Illinois: Annotated." In 1911 the Bureau published a general survey of the constitutional situation in Illinois, entitled "Constitutional Conventions in Illinois," and a second edition of this publication was issued in 1919. In the bulletins collected in this volume reference is occasionally made to this publication for a fuller discussion of certain subjects.

Each bulletin as separately issued contained an index. These separate indexes have been omitted from this volume, and a consolidated index has been substituted which seeks to include references to every subject of importance.

LEGISLATIVE REFERENCE BUREAU.

February, 1920.

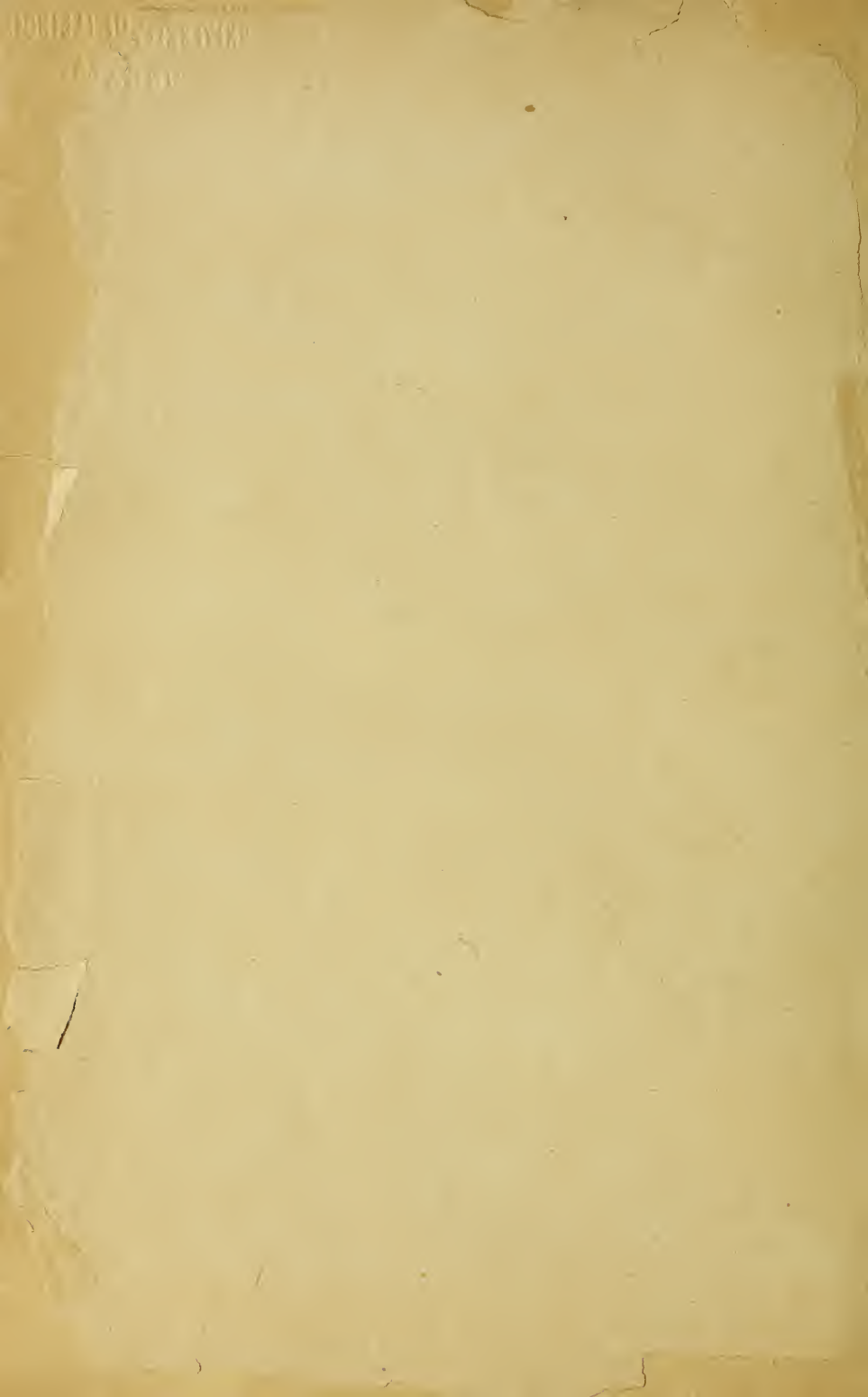


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CONSTITUTIONAL CONVENTION

BULLETIN No. 1

The Procedure and Problems of the Constitutional Convention



Compiled and Published by the
LEGISLATIVE REFERENCE BUREAU
Springfield, Illinois

[Printed by authority of the State of Illinois.]

LEGISLATIVE REFERENCE BUREAU.

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constitutional convention.*



INTRODUCTION AND SUMMARY.

This is the first of a series of pamphlets to be issued in connection with the constitutional convention. The purpose of this pamphlet is largely introductory. It seeks to do the following things:

(1) To outline briefly the plans now in progress for the collection of data for the use of delegates to the convention.

(2) To indicate the scope of a State Constitution as contrasted with functions of the regular state legislature, and to point out some of the dangers likely to result from detailed constitutional provisions.

(3) To discuss the types of problems involved in drafting a new constitution or amendments to the constitution of 1870, using as illustrations the provisions of the present constitution of this State.

(4) To indicate, from the experience of other conventions, some of the problems involved in the procedure of the constitutional convention. This discussion is largely the same as that in the publication issued by the Legislative Reference Bureau on "Constitutional Conventions in Illinois".

(5) To give a general outline of state constitutional developments since 1776, and

(6) To give somewhat in detail a statement of constitutional changes since 1900. The Illinois convention will be facing substantially the same problems that have presented themselves in other states, and it has seemed wise that the delegates to the convention should have before them a rather full indication of what other states have done in recent years.

LEGISLATIVE REFERENCE BUREAU,
Springfield, Illinois.

September, 1919.

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I. WORK IN PREPARATION FOR THE CONSTITUTIONAL CONVENTION.

The delegates to a constitutional convention can not take the time to collect the information needed in their deliberations and if such information is collected the work must in the main be done in advance of the meeting of the convention. For this reason the practice has developed of planning in advance for the collection of desired information. Collections of constitutions were made available for the New York conventions of 1867 and 1894, and for the Michigan convention of 1907-08; and a digest of state constitutions was prepared for the Ohio convention of 1912. For the New Hampshire conventions which assembled in 1902 and 1918 manuals were prepared containing much useful information. In New York, careful preparations of materials were made in advance of the conventions of 1846, 1867, 1894 and 1915. For the Massachusetts constitutional convention of 1917-19 a series of publications was issued collecting information upon the more important subjects likely to be considered by the convention.

Some of the work done for conventions in other states will be of distinct use in Illinois, and some private publications will be useful. The publication in 1918 of Kettleborough's *State Constitutions* makes unnecessary the preparation for the Illinois convention of a collection of state constitutions.¹

The *Index-Digest of State Constitutions*, prepared for the New York constitutional convention of 1915 gives in alphabetical order a careful digest of the constitutional provisions of all of the states in 1915. A number of changes have been made since that time, but these can be covered by a manuscript supplement to the New York Index-Digest, and the preparation of such an index-digest for the constitutional convention of Illinois is thus rendered unnecessary.

Copies of Kettleborough's collection and of the New York Index-Digest will, through official action, be made available for all of the committees of the constitutional convention of this State.

In preparation for the constitutional convention to be assembled in Illinois in 1920, the Fifty-first General Assembly made appropriations for the compilation of data for the use of delegates. In the compilation of data it is contemplated that two types of publications shall be issued in advance of the assembling of the convention:

- (a) An annotated edition of the constitution of 1870 will be prepared. This publication will give for each clause of the constitution:

¹ Charles Kettleborough, *The State Constitutions*. B. F. Bowen & Co., Indianapolis, Ind., 1918.

- (1) A summary outlining the judicial construction of the clause.
- (2) A note of veto messages based upon the clause, and
- (3) A note of Attorney General's opinions interpreting the clause.

With such a statement regarding each clause of the constitution it is thought that the delegates to the convention will be able to act with respect to proposed changes in the existing constitution without undue delay.

- (b) A series of small pamphlets is planned, each pamphlet to deal with some one of the important problems likely to present itself to the constitutional convention. Pamphlets will be issued upon the following subjects:
 - (1) The procedure and problems of the constitutional convention.
 - (2) The initiative, referendum and recall.
 - (3) The amending article of the constitution.
 - (4) State and local finance.
 - (5) The short ballot.
 - (6) Municipal home rule.
 - (7) Eminent domain and excess condemnation.
 - (8) The legislative department.
 - (9) The executive department.
 - (10) The judicial department, jury, grand jury and claims against the state.
 - (11) Local governments in Chicago and Cook County.
 - (12) County and local government in Illinois.
 - (13) Farm tenancy and rural credits.
 - (14) Social and economic problems.
 - (15) Bill of rights, education, militia, suffrage and elections, preamble, boundaries, distribution of powers, schedule.

The plan with respect to each of these pamphlets is to give as fully as possible the information upon the subject with respect to Illinois, and data regarding experiences of other states and countries. Each investigation will seek to present merely the facts, and to present them impartially. It is desired that the investigations should cover every question likely to come prominently before the convention

II. THE SCOPE OF A STATE CONSTITUTION.

The purpose of a state constitution is primarily that of embodying the more fundamental and permanent principles by which the state is to be governed. The constitution should not contain a large mass of detail. The Constitution of 1818 was a relatively brief document containing little detail, and because of this fact, would with relatively few changes still be a workable constitution were it now in force. The Constitution of 1848 contained a great deal of detail. For example, it fixed the salaries of state officers, with the highest salary that of governor at \$1,500. This constitution also regulated in detail the judicial organization of the State. It was natural that the salaries so fixed should soon require change, and that a judicial organization adopted for the State in 1848 should have been outgrown when the State doubled in population, as it soon did.

A movement for this reason almost at once began for the revision of the Constitution, and the people in 1860 voted for the assembling of a constitutional convention. The Constitutional Conventions of 1862 and 1870 were made necessary by the unessential detail which was placed in the Constitution of 1848. The Convention of 1920 has largely become necessary because of the details which were placed in the Constitution of 1870.

The placing of details in a constitution is not only the means of preserving from change the matters to which such details relate, but is also the most effective means of preventing improvements as to that particular matter. Those desiring to put in a constitution details as to any particular matter should first convince themselves that that matter is one incapable of further development. For what is done by placing the matter in the Constitution is primarily the setting up of two barriers against change. In order to obtain desired legislation which may be prevented by a provision in the Constitution, it becomes necessary, first to change the Constitution, and then to enact the legislation made possible by the constitutional change. Those desiring to place regulations as to a particular matter in the Constitution, should balance in their minds their desire to obtain constitutional recognition for the matter as against the possible desirability of making changes as to such matter in the future.

A fair illustration of the manner in which difficulty may be made by placing a matter in the Constitution may be found in the Nebraska Constitution of 1876. In the convention which framed that Constitution some benevolent person desired to obtain a recognition of the principle of having a separate institution for youthful offenders. There was of course no objection to this principle and a provision

was inserted in the Constitution authorizing the legislature to establish a school or schools for the safe keeping, education, employment and reformation of all children under the age of 16 years. The legislature later desired to extend the age and sought to do so by legislation. The Supreme Court of the State, taking a view which would have been taken by the highest court of any state, held that the constitution limits the legislature to the establishment of schools for children under the age of 16 years. Had the Constitution contained nothing about the matter, the legislature would have been free to act when new needs presented themselves. (*Scott v. Flowers*, 61 Neb. 621, 1901.)

Legislation in a constitution presents serious dangers, not only in that such legislation is likely to retard future development and to force constitutional change at frequent intervals, but also because detailed provisions are apt to lead to a good deal of litigation before their precise meaning is determined. The Massachusetts initiative and referendum provisions adopted in 1918 contain a great deal of detail and are likely to lead to a number of judicial decisions before their meaning is fully determined. Brief constitutional provisions will of course lead to judicial decisions, and carefully phrased provisions will oftentimes give rise to adjudication before their meaning is fully made clear, but detailed provisions add greatly to the difficulties and the dangers of judicial construction.

What has been said above may be emphasized by the statement that the rapid increase of judicial decisions holding state laws unconstitutional began with the increased detail in state constitutions. Not only this, but the rapid increase in judicial decisions of this character may be said to date from the development of the doctrine of implied limitations in state constitutions. That is, a state constitution seeks to deal with a subject, and from the constitutional provisions dealing with the subject, the court implies a denial of legislative authority to deal with other phases of the same subject. An illustration is presented in the Nebraska case referred to above. The Nebraska Constitution did not prohibit the legislature from establishing reform schools for children over the age of 16 years, but the Constitution dealt with the subject itself and prescribed a duty of the legislature with respect to the matter. Courts might in the beginning have taken the view with respect to such provisions that they did not limit the power of the legislature, but merely commanded the legislature to do one thing and left full power in the legislature to deal with the subject in all other respects. Such a judicial view might have accorded with the theory that state legislatures have all powers not denied to them by the Constitution, but the other view has been taken by the courts of this country since about 1840, and is the view which has been acted upon by the framers of a large number of state constitutions. This view is likely, therefore, to be adhered to, and a constitutional provision dealing with a subject is likely to continue to be construed as a definite limitation upon the legislature with respect to that subject.

In theory a state constitution is primarily a limitation upon legislative power and the legislature has all powers not denied to it by the constitution. The theory of judicial construction referred to in the

preceding paragraph states in reality an exception to the no the constitution is always construed as if it were a mere limitation of legislative power, but the theory of construction here discussed be borne in mind in the framing of a new constitution.

It is not too much to say that a legislature will ordinarily be guided by a constitutional provision much more than the framers of the constitution contemplated. This fact may be illustrated by an impression of the Supreme Court of Illinois. No attorney general was provided for by the Constitution of 1848. The Constitution of 1870 provides for an attorney general with "such duties as may be prescribed by law". In view of the fact that the office of attorney general was a constitutional office in 1870 and of the fact that under the common law he was to have "such duties as may be prescribed by law", the framers of the constitution of 1870 may well have thought that they closed the duties of the attorney general to be prescribed by the general assembly. However, the Supreme Court of Illinois in the case of *People v. Russel*, 270 Ill., 304 (1915), took the view that the framers of the constitution intended by the phrase "such duties as may be prescribed by law" to confer upon the attorney general all of the duties of an English attorney general had at common law, and that the phrase which apparently conferred a power upon the general assembly actually forbade the general assembly's interfering with any common law duties of an attorney general. The same view was taken with reference to any institution which has existed at common law, or which has existed by previous statutes or by a previous constitution, unless care is taken to make it clear that a constitutional provision regarding such an institution is not intended to adopt the constitution the provisions of the common law or the provisions of existing institutions.

Reference is made later to the difficulties occasioned by the fact that the framers of the Constitution of 1870 inserted the words "heretofore enjoyed" into the constitutional guarantee of jury trial.

Another case should be referred to as indicating the danger of elaborate details in a constitution. The framers of the proposed New York constitution of 1915 worked out in detail a scheme for the consolidation of state executive departments, and in this scheme used language which implied that each existing office or institution was to remain, but that all offices were to be classified into 17 groups. The proposed constitution was rejected and in connection with any effective executive re-organization this rejection was wise, for the details in the proposal would, without the intention of the framers, have saddled upon the State a complex executive organization for the preservation of existing offices and would not have worked a simplification which was sought by the framers of the proposal.

To some extent, however, the facts have justified the placing of detailed provisions in state constitutions. For example, an amendment was adopted to the New York Constitution in 1913 which gave to the authority of the legislature over compensation of injured employees. This amendment was directly made necessary by the view of "due process of law" taken by the Court of Appeals in

the case of *Ives v. South Buffalo Railway Company*, 201
1.

constitutional amendments of 1912 with respect to the eight-
on public works, workmen's compensation and several other
ere made necessary either by decisions of the Ohio courts or
ons which it was thought such courts would make if certain
egislation were enacted. That is, in a fair number of cases
ect to social and industrial matters, the courts have directly
placing of provisions in state constitutions, in order to over-
row decisions or in order to avoid possible future decisions.
constitutional provisions of this type are not numerous, and
any way account for the great mass of detail which may now
in state constitutions with respect to social and industrial
and with respect to other matters.

clear that an easier amending process is needed in this State,
gh the Constitution be made less detailed than at present, but
an easy amending process a great deal of detail in the Con-
s still a means of preventing or retarding progress.

her argument against increasing the detail in state constitu-
ld be referred to. Under state constitutions as they now ex-
s country, putting a matter in the constitution means that the
y to change it is by a popular vote. That is, as to constitu-
ovisions, there is outside of Delaware a compulsory refer-
n order to obtain a change, although in a few state constitu-
tters of a clearly temporary character have occasionally been
made subject to legislative authority. However, it is gener-

that putting a matter into the constitution means that there
a popular vote in order to change that matter, no matter how
ant it may be. Whatever may be said in favor of an optional
um (that is, of a power in a certain proportion of the voters to
popular vote upon a measure), there is little to be said in favor
plan which forces popular voting upon unimportant matters,
tive of whether any of the voters desire that such matter be
ed or not. The increased detail of state constitutions increases
ers that must be submitted to popular vote irrespective of any
for such a vote, and in a large number of the states during the
years proposals submitted by the legislatures as constitutional
ments (and necessarily submitted to popular vote), have been
ess important than proposals submitted in the form of ordinary
on. In the State of California since 1900 one hundred and
posed constitutional amendments have been submitted, and
these proposed amendments have been rendered necessary by
that a large mass of detail has been inserted into the constitu-
Of course, it is possible to insert a great deal of detail in the
tution and to make such detail alterable by ordinary legislative
with a referendum provided a popular petition requires a refer-
upon such matters. This, however, is merely to say that if the
were one to be left to ordinary legislative action it should have
mitted from the constitution.

III. PROBLEMS OF DRAFTSMANSHIP.

A constitutional convention differs from the regular legislative body in several important respects. The convention will deal with but one document which is fairly brief and all of whose provisions must harmonize with each other. A legislative body ordinarily deals with hundreds of proposals, relating to different matters, and without a necessity that each proposal harmonize completely with each other proposal. The legislative body is throughout a session of some months acting upon and adopting a number of laws, and if a law passed earlier in the session conflicts with one adopted later in the same session (as is often the case) the difficulty may be solved by the rule that the later act replaces the earlier in so far as there is conflict. No such possibility presents itself to a constitutional convention.

The proposals of a convention will presumably be agreed to and submitted to the people at the same time, and in view of this fact the problem of careful draftsmanship and of harmonizing all provisions is much more important than in a regular legislative body. Not only this, but a constitution is likely to remain for a long time unchanged. Each part of it will be judicially interpreted, and will be interpreted in view of earlier constitutional provisions and of decisions based upon such earlier provisions. There is of course need of great care in the draftsmanship of statutes, but there is even greater need for care in the drafting of an instrument which may continue in force for a period of fifty years, as has been the case with the present constitution of Illinois.

Language of the present constitution to which there is no objection should be left unchanged, for to change such language with a notion of making it clearer or with a notion of adopting better English, is apt merely to raise questions of interpretation which must go to the courts for decision. Language which on its face does not seem to mean what is desired, but which by judicial interpretation has obtained a meaning that is satisfactory, should also be left as it is, for here again to make a change is merely to invite difficulty.

Attention is called below to the questions which have presented themselves because the framers of the constitution of 1870 varied the phraseology of the guarantee of jury trial. The Illinois constitution of 1870 is on the whole a well drafted document, but numerous matters of phraseology in it have made difficulty, although they were probably not of importance in the substance of the constitution as framed.

Certain types of difficulties which have presented themselves in the constitution of 1870 are commented upon below, not for the purpose of criticizing in any way the work of the convention of 1869-70,

but for the purpose of indicating things that should be avoided in the drafting of a new constitution or in the drafting of changes in the existing constitution.

The use of language which may be given a more extended meaning than was intended: The Constitution of 1870 guarantees the right of jury trial "as heretofore enjoyed." These words had not appeared in the constitutions of 1818 and 1848, and their addition in 1870 was probably nothing more than a rhetorical flourish. The question necessarily presented itself to the Supreme Court, however, as to whether the jury trial so adopted was the jury trial as it existed by statute in 1870, so that such statutes became substantially unalterable. Such a result was denied in the case of *George v. People*, 167 Ill. 447, (1897) pp. 456-458. As the court said, if such an interpretation were given, the general assembly would be powerless to abolish written instructions to juries or to alter the numerous statutory details as to jury trial. Both before and after the *George* case, however, the Supreme Court has resorted to statutes in force between 1818 and 1870 to determine what was jury trial "as heretofore enjoyed," although such resort has been had to support rather than to defeat legislative power. *Borg v. C. R. I. & P. Ry. Co.*, 162 Ill. 348 (1896) pp. 352, 353; *Spring Valley v. Spring Valley Coal Co.*, 173 Ill. 497 (1898) p. 503 et seq. So far as can be determined the effect of the phrase "as heretofore enjoyed" is that: (1) it does not keep in effect as constitutional requirements the statutory provisions existing in 1870, nor prevent changes in details of legislation in force in 1870 as to jury trial; (2) it does permit new legislation affecting jury trial provided a similar type of legislation was in force in this state before 1870.

Reference has previously been made to the decision of *Fergus v. Russel*, 270 Ill. 304, and to the broad construction there given to the powers of the Attorney General under the constitution of 1870. In order to accomplish the purpose of leaving the duties of attorney general subject to legislative control, the constitution makers would have had not merely to grant power to the general assembly, but also to insert an express denial of common law powers independently of legislation. An apparent grant of power to the general assembly by the constitution became a grant of authority to the attorney general and a denial of power to the general assembly.

So, the creation of the office of sheriff carries to that office common law functions which can not be withdrawn by legislative act, and this view has in Illinois a better logical argument in its support than has the case of *Fergus v. Russell*, for the sheriff has been a constitutional officer in Illinois since 1818. *Dahnke v. People*, 168 Ill. 102 (1907).

Constitutional provisions creating the offices of state auditor, secretary of state and state treasurer, also appear to confer constitutional powers upon these officers, although they are not common law officers, and although the constitution as to them also provides that they "shall perform such duties as may be prescribed by law."

Since about 1840, implied limitations in state constitutions have come to play through judicial construction almost as large a share as express limitations, and if undesired implied limitations are to be avoided language must be carefully chosen, and implications already drawn by the courts of this and other states in certain cases must be expressly negated.

Similar clauses used in several parts of the Constitution: The constitution of 1870 requires a two-thirds vote of the two houses of the general assembly in five cases; in the passage of emergency measures, (Art. IV, Sec. 13); in increasing the aggregate amount of appropriations once made, (Art. IV, Sec. 18); in the passage of bills over the governor's veto, (Art. V, Sec. 16); in the proposal of amendments to the constitution, (Art. XIV, Sec. 2); and in the submission to popular vote of the question of calling a constitutional convention, (Art. XIV, Sec. 1). In four of these cases the constitution specifies a vote of two-thirds of the members "elected" to each of the two houses; in one case it specifies "two-thirds of the members of each house," (Art. XIV, Sec. 1). Under general rules of judicial construction a difference in language may in so important a document as a constitution be presumed to intend a difference of meaning, and it would be easily possible to construe "two-thirds of the members of each house" to mean two-thirds of a quorum, rather than two-thirds of all elected. In fact judicial decisions in other states would support such a construction, (*Green v. Weller*, 32 Miss. 650 (1856); *State v. McBride*, 4 Mo. 303 (1836), and a view supporting such a construction has also been recently taken by the United States Supreme Court, *Missouri Pacific Ry. Co. v. Kansas*, 248 U. S. 276 (1919). Yet the difference in language in the clauses here discussed was almost certainly a matter of pure accident.

The constitution of 1870 contains a number of provisions with respect to popular votes:

- Art. IV, Sec. 18, Contracting state debt;
- Art. IV, Sec. 33, Appropriations for construction of state house;
- Art. X, Sec. 2, Division of counties;
- Art. X, Sec. 4, Removal of county seats;
- Art. X, Sec. 5, Adoption and abandonment of township organization;
- Art. XI, Sec. 5, Adoption of banking laws;
- Art. XIV, Sec. 1, Vote upon constitutional convention, and upon proposals submitted by convention;
- Art. XIV, Sec. 2, Vote upon proposed constitutional amendments.
- Separate Section, Vote on question of sale or lease of Illinois and Michigan Canal.

In some of these provisions differences in language were clearly intended to adopt different rules, but this was not true in all cases. For

example, Art. X, Sec. 5, provides for the adoption of the township system "by a majority of the legal voters of such county, voting at any general election", and for the abolition of the township system if at a general election "a majority of all the votes cast upon that question shall be against township organization". It seems pretty clear that no difference in meaning was here intended, and that the purpose of the constitutional convention of 1870 was that merely of adding a provision for the abolition of the township system by the same vote as that required to establish the system, carrying out the principle laid down by the State Supreme Court in *People ex rel. Manier v. Couchman*, 15 Ill., 142 (1853).

So, with respect to indebtedness and expenditures, Art. IV, Sec. 33, requires a majority of all votes cast at a general election to authorize additional expenditures for the construction of the state house; while Art. IV, Sec. 18, requires for the incurring of indebtedness by the State in excess of \$250,000, a majority of the votes cast for members of the general assembly.

For the calling of a constitutional convention, the constitution (Art. XIV, Sec. 1) requires a majority of those voting at a general election. For the adoption of a constitutional amendment it requires (Art. XIV, Sec. 2) a submission "at the next election of members of the general assembly" with "a majority of the electors voting at said election". Under this latter clause the argument was a plausible one that the difference in phraseology was intentional and made the vote for members of the general assembly the test by which to determine whether an amendment had been adopted. In order to settle this issue a decision of the Supreme Court was necessary, and this decision was by a divided court. *People v. Stevenson*, 281 Ill., 17 (1917).

Throughout the whole of the Constitution of 1870 runs the principle that the compensation of officers shall not be increased or diminished during their terms. Provisions with respect to this matter appear in the Constitution at least eight times (Art. IV, Sec. 21, Sec. 22, Cl. 20; Art. V, Sec. 23; Art. VI, Secs. 7, 16, 25; Art. IX, Sec. 11; Art. X, Sec. 10), and are reinforced by still another provision (Art. IV, Sec. 19). It has required a decision of the Supreme Court to determine that the differently phrased clauses mean the same thing. *Foreman v. People*, 209 Ill., 567 (1904). A single clause stating one principle would have been wiser. See also *People ex rel. Holdom v. Schweitzer*, 280 Ill., 436 (1917).

The Constitution of 1870 expressly prohibits any member of the general assembly being interested in contracts with the State or any county authorized by a law passed during his term, (Art. IV, Sec. 15); prohibits members of the General Assembly or other officers of the State being interested in printing and certain other contracts (Art. IV, Sec. 25); and also expressly prohibits teachers and school officers being interested in school supplies (Art. VIII, Sec. 4).

The question as to the effect of these three provisions upon legislative power has not presented itself to the Supreme Court of this State, but under the view taken by the Supreme Court in the case of *People ex rel. Hoyne v. McCormick*, 261 Ill., 413 (1914), the view

might well be taken that the Constitution by prohibiting certain types of interests in contracts, by implication prevents the general assembly from forbidding any other officers being interested in contracts and in fact guarantees them by the Constitution a right to be so interested. This, of course, was not the purpose of the framers of the Constitution, but illustrates the possible dangers of dealing with a matter piecemeal in different parts of the Constitution. It is much better in a matter of this kind to deal with the subject by one provision, as is done in the Constitution of 1870 with respect to the extension of terms of office (Art. IV, Sec. 28).

With respect to special and private legislation also a policy of prohibition runs throughout the Constitution. Upon this subject there is a series of clauses:

- Art. IV, Sec. 22, Prohibits local or special legislation in twenty-three enumerated cases.
- Art. IV, Sec. 16, Prohibits appropriations in private laws.
- Art. IX, Sec. 3, Requires that exemptions from taxation be only by general law.
- Art. X, Sec. 11, Provides that fees shall be fixed only by general law.
- Art. X, Sec. 5, Forbids special laws with reference to township organization.
- Art. XI, Sec. 1, Forbids the creation of corporations by special laws.

These provisions are supplemented by provisions requiring that laws relating to the courts be general and of uniform operation (Art. VI, Sec. 29), and that the jurisdiction of justices and police magistrates be uniform (Art. VI, Sec. 21).

To find what is prohibited as special legislation therefore requires a search of the whole text of the Constitution. In some cases judicial construction of these clauses has restricted their application. On the basis of *Fergus v. Russel*, 277 Ill., 20 (1917), the prohibition of appropriations of money in private laws means less than its language seems to mean. On the other hand the prohibition of local or special laws "granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever", has come by interpretation to mean much more than its language seems to mean.

Language permitting or leading to technical constructions:
An effort should be made in drafting a constitution to avoid imposing upon the courts the necessity of determining whether "or" is used in the sense of "and," and other types of technical constructions. Article IX, Sec. 9, of the Constitution provides for local improvements "by special assessments or by special taxation of contiguous property or otherwise." The phrase here would appear to permit a combination of special assessments and special taxation, but the Supreme Court has held the "or" of this clause to make necessary the use of one or the other methods, so that the words "or other-

wise" mean "or otherwise than by special assessments alone or by special taxation alone", although the court also says it is proper to combine special assessments with general taxation or special taxation with general taxation. A different interpretation of the word "or" would have been easily possible, especially with that word modified by the words "or otherwise". *Kuehner v. City of Freeport*, 143 Ill., 92 (1892).

Perhaps, however, the most technical case of constitutional construction in Illinois is that which relates to the qualifications of county commissioners. In Article X, Sec. 6, the Constitution provides that in counties not under township organization, three officers shall be elected to be known as "the board of county commissioners", quoting the title of the board. Section 7 of the same article provides for "a board of commissioners of fifteen persons" for Cook County, not quoting the name of the board. Elsewhere in the Constitution these boards are both referred to as "the county board". In Article VI, Sec. 17, (a section which should have limited itself entirely to judicial matters) qualifications are prescribed for membership in the "board of county commissioners", the title being quoted. The Supreme Court held that the qualifications prescribed in Art. VI, Sec. 17 did not apply to Cook County and could not be made so to apply by legislation, because the Cook County board was referred to elsewhere as "a" board, and because of the use made of quotation marks. *People ex rel. Hoyne v. McCormick*, 261 Ill., 413 (1914).

While, as indicated above, statements in varying language may be held to mean the same thing, slight variations, as in this case, may be held to establish a material difference in meaning.

Language when it has been put into a constitution is oftentimes capable of an interpretation different from that which its framers may have intended, and for this reason slight differences in phraseology oftentimes become important. In Art. XIV, Sec. 1 of the Constitution of 1870, it is provided that delegates to a constitutional convention shall be elected "in the same manner" as members of the Senate. This language was probably used without a great deal of attention, but has almost necessarily been construed to require the partisan nomination and election of delegates to a constitutional convention, a result which clearly could not have been intended.

The Constitution of 1870 permits the creation of probate courts in each county having a population of over 50,000. It would be easily possible under this provision for the court to have said that the general assembly, if it were to create probate courts at all, must create probate courts for all counties with a population of over 50,000, although the court actually reached the opposite view (*Knickerbocker v. People ex rel. Butz*, 102 Ill., 218). The provision of the Constitution of 1870 providing for the creation of appellate courts, in prescribing the jurisdiction of such courts might easily have been interpreted by the Supreme Court to vest an intermediate appellate jurisdiction in certain types of cases independently of legislative action once the appellate courts were established, and in fact the language could perhaps more readily be construed in that way were it not for

the fact that such a construction would materially handicap the general assembly in its powers with respect to the judicial system of the State.

Other types of difficulties with respect to draftsmanship: Difficulties of other types also present themselves in constitutional draftsmanship. For example, the use of definitions in a constitution is apt to be dangerous, and the definition of the word "office" in Article V, Section 24, has made a good deal of difficulty by drawing a rather artificial distinction with respect to appropriations under Article IV, Section 16. This difficulty has not been fully met by the decision of the State Supreme Court in *Fergus v. Russel*, 270 Ill., 304; nor by the decree of the lower court in the same case, discussed in the Opinions of the Attorney General, 1916, pp. 13-24.

With respect to the re-apportionment of judicial areas, Art. VI, Sec. 13 provides for changes of circuits at a legislative session "next preceding the election for circuit judges, but at no other time". Under the Constitution circuit judges are all elected at the same time, and this provision makes no difficulty. With respect to Supreme Court judges, however, a similar provision in Article VI, Sec. 5 makes difficulty, because all Supreme Court judges are not elected at the same time. In case one judge only was to be elected at a certain time, his district could be changed only at a session preceding that election, and, if the Constitution were to be construed literally no other district could be changed at that time. The Supreme Court had, therefore, to deny any power to change or to hold that in changing one district there was power to make incidental changes in other districts. *People ex rel. Vandeventer v. Rose*, 203 Ill., 46 (1903).

In some cases the adoption by reference, for another purpose, of a clause elsewhere in the Constitution may lead to an unexpected result. For example, it is probable that the qualifications for delegates to a constitutional convention, prescribed in Article XIV, Sec. 1, were not purposely intended to disqualify members of the two houses of the general assembly.

In some cases it will be desirable to bring into closer relationship provisions in the present Constitution dealing with the same subject. Some of the remarks above relate to this matter. Certainly, qualifications of members of boards of county commissioners should not be in an article dealing with the judicial department (Art. VI, Sec. 17). Provisions now in three parts of the Constitution dealing with eminent domain may well be brought together (Art. II, Sec. 13; Art. IV, Sec. 30; Art. XI, Sec. 14).

Particular attention should be called to the fact that the greater the detail in a constitution, the greater is the danger due to defects of draftsmanship. The danger here dealt with is not the danger due to the fact that conditions may change so as to make detailed constitutional regulations inapplicable, but the danger that in drafting provisions they may be so worded as to mean something not fully intended by their framers.

Nothing said here is intended to conflict with the views that a constitutional provision ought not to be changed merely to adopt a better phraseology, if the provision as now interpreted means what it is desired to have it mean; but uniformity of phraseology is always desirable where two clauses mean the same thing and there is no danger in establishing uniformity in such cases, either before or after judicial construction of the phrases.

IV. PROCEDURE OF THE CONSTITUTIONAL CONVENTION.

Submission of convention's work: The procedure of the convention will vary somewhat in accordance with the number of changes to be made in the Constitution and with the method of submitting the convention's work to popular vote. The convention of 1869-70 submitted its work in the form of nine separate proposals, one proposal containing a revised constitution and the eight other proposals constituting the more seriously controverted problems acted upon by the convention.

The convention of 1869-70 set a wise precedent for the convention of 1920. There will be a number of issues before the convention of 1920 which are seriously controversial in character and upon which the people will wish an opportunity and should have an opportunity to express themselves separately. On the other hand, there are a number of non-controversial matters in the present Constitution which need to be changed, and to submit each of these matters as an independent proposition would be useless, and would place an unreasonable burden upon each voter. Such non-controversial matters might well be submitted as a unit in a revised constitution, if the convention sees fit to do this. Under this plan the voters would be able to pass as a unit upon non-controversial matters and to pass separately upon each matter of a controversial character or of distinct popular interest. It would be foolish to submit a series of separate propositions to the voters as to such matters as the amendment of prior laws by reference to their titles, the reading of bills three times in each house of the general assembly, etc.

The Ohio convention of 1912 submitted 42 separate constitutional changes to the people. The Massachusetts convention of 1917-19 submitted three questions to be voted upon at one election and nineteen questions to be voted upon at another election. With forty-two questions submitted, the plan of separate submission becomes too burdensome, but there should be no difficulty about submitting to the voters of Illinois each controversial question separately and the non-controversial matters as a single unit.

The long intervals which elapse between the meetings of constitutional conventions make it desirable that the convention should undertake a complete re-examination of the existing constitution in order to make changes either of addition or of omission which may have become necessary since the framing of the present Constitution. However, such a complete re-examination can be had, and the work of the convention submitted without the undue multiplication of issues to be separately presented to the voters.

Length of conventions: The political situation in the year 1920 makes it desirable that the convention should complete its work and submit its proposals to the people as promptly as possible. A presidential year is not a good one in which to submit matters which should be deliberated upon carefully by the voters, even though the questions are to be submitted at a special election. It is desirable if possible that the convention's work be passed upon by the people before the excitement of the State primary and of the presidential campaign.

The convention of 1869-70 assembled on December 13, 1869, and adjourned on May 13, 1870, but took a recess from March 7 to April 12, 1870. In the convention of 1870 a great deal of time was wasted in the preliminary organization, primarily because of the discussion of the oath to be taken by the delegates. There seems to be no reason why the convention of 1920 should not be able to organize promptly and to complete its work within a period of four months.

Rules and committee organization: With a single specific object before it, a convention should adopt rules primarily for the purpose of accomplishing the following purposes: (1) to obtain full debate upon and deliberate consideration of each proposal of constitutional change; (2) to assure that every important proposal is disposed of only in accordance with the affirmative wishes of the convention; and (3) to have the work of revision or amendment carefully phrased for submission to the people, without an undue prolongation of the session of the convention.

In a convention, as in a legislative body, the organization of committees is the most essential problem. In the framing of a constitution it may be possible for a convention to conduct all of its work directly in convention, that is, acting as a body without going into committee of the whole or dividing the work among committees. But such a plan would be cumbersome and unsatisfactory, and has not been employed. In the use of committees conventions have employed three methods: (1) the transaction of business mainly in committee of the whole, with perhaps some smaller committees appointed to handle particular matters; (2) the appointment of one small committee with power to draft a proposed constitution and submit it for the consideration of the whole convention, either in committee of the whole or otherwise; (3) the appointment of a number of committees and the apportionment among them of the subjects to be covered by the constitution, such committees to report to the convention, as such, or to the convention in committee of the whole.

The more usual practice has been for a convention to appoint a number of committees and to distribute among them the several parts of the constitution, to be considered and reported upon to the convention either in regular session or in committee of the whole. The number of committees appointed for such a purpose has varied considerably, running from four in one case to more than thirty in others.

The number of committees will, of course, vary with the work to be done by a convention, but if all parts of a constitution are to be examined with care there should be a separate committee for each important subject. Separate committees will also be necessary to deal with questions which are at the time of great popular interest, because an effort will naturally be made to have these subjects dealt with in the constitution. For example, should a convention be assembled in Illinois, it would be appropriate to have a separate committee upon the initiative and referendum. The New York convention of 1894 had thirty-one committees; the New York convention of 1915, thirty committees; the Virginia convention of 1901-02, sixteen committees; the Michigan convention of 1907-08, twenty-nine committees; the Ohio convention of 1912, twenty-five; the Massachusetts convention of 1917, twenty-four. The Illinois convention of 1869-70 had thirty-nine committees, a number much larger than was needed. Of these committees six made no report whatever to the convention, and because of the lack of care in planning the scope of committees, several committees were considering and reporting upon the same subjects. A much more satisfactory distribution of the work could have been made in the Illinois convention of 1869-70 had there been fewer committees; for example, there were separate committees on canals and canal lands, internal improvements, roads and internal navigation, which might well have been consolidated into one; and in several cases there were two separate committees to deal with closely related subjects, both of which were relatively unimportant from a constitutional standpoint. Upon the proper organization of committees and a proper distribution of work among them depends to a large extent the success of a convention.

The size of committees must, of course, vary. The number and size should be such that each member may have some committee service, but each member should not be burdened with service upon four committees, as in Illinois in 1869-70. Somewhat the same situation existed in the Ohio convention of 1912. The size of a committee must depend somewhat upon the function which it is to perform. For a convention there may be said to be three types of committees; (1) those on the formal business of the convention, such as committees on rules, printing, etc.; (2) those whose functions are largely technical, such as a committee on phraseology and style; (3) those whose function would be largely that of obtaining agreement upon broad questions of principle, such as might be to a large extent a committee dealing with the subject of municipal home rule. Of course, most committees will have duties of all three types, but some difference in size is justified. Committees of the first type should naturally be small; those of the second type may well be larger, but even for the third type committees of more than fifteen members are apt to work ineffectively. The average size of committees in the Ohio convention of 1912 was seventeen, and a number of committees had 20 or 21 members. Because of this the committee work was less effective than it might have been. There is a tendency to organize either a legislative body or a convention into too many committees and into committees

each of which is too large for effective work. In the New York Convention of 1915 a large number of the committees had seventeen members each, and in the Massachusetts Convention of 1917 most of the committees were composed of fifteen members.

Committees are, of course, organs of the convention, appointed for the purpose of maturing matters for consideration by that body. A committee should, therefore, be subject at all times to control by a majority of the convention, and should have no power (by failing to report upon any matter) to prevent its consideration by the convention. Abuse of committee power is not apt to occur in a convention, but the rules should be so framed as to prevent the possibility of such abuse. In the New York Convention of 1894 there was the following rule: "Whenever a committee shall have acted adversely on any proposed amendment to the constitution such committee need not report such adverse determination, unless requested in writing by the member introducing such amendment so to do and it was determined (by the committee) in the affirmative." However, in this convention any matter might be recalled from a committee by the majority action of the convention; and a similar rule for recalling matters from a committee existed in the Michigan Convention of 1907-08, the New York Convention of 1915, and the Alabama Convention of 1901-02. In the Michigan Convention of 1907-08, there was a rule that "all standing committees before reporting adversely on any proposal shall notify the member presenting such proposal when and where he may meet such committee to explain the same."

In the Ohio Convention of 1912, there was a rule which read as follows: "Any time after two weeks from the time when the convention shall have committed any proposal to any committee, a report thereon in the meantime not having been made by said committee, the author of such proposal may, when no other business is pending and in any order of business, demand that such proposal be reported back to the convention; and such demand when so made shall be deemed the action of the convention, and the proposal is at once before the convention subject to all rules of procedure as before. Provided, however, that this shall not apply to a member whose proposal has passed its second reading and has been referred (to the committee on arrangement and phraseology). The convention by a majority vote may demand the forthwith report of any proposal that has been committed to any committee."

In the Arizona Convention of 1910 committees were required to report upon each proposal referred to them within eight days after the day of reference, unless otherwise ordered by the convention. In Massachusetts in 1917 all proposals of amendment were required to be submitted to the convention by June 25, and all committees were required to file their reports upon such proposals of amendment by July 16. The New York convention of 1915 regarded it as sufficient to require that "the several committees shall consider and report without unnecessary delay upon the respective matters referred to them by the convention." The Arizona rule is unwise. Upon any important matter a number of proposals will be introduced and referred to a

committee. The committee in framing a proposed constitutional provision upon the matter should consider all the proposals, and should report upon the matter as a unit. Any rule requiring a report upon each separate proposal within a limited time would greatly handicap the work of committees.

The form of committee proceedings and of committee reports ought to be left to the committees themselves. It has been urged in some conventions that committees should confine their reports to recommended clauses or articles without giving reasons for such recommendations. Where a recommendation relates to a change in existing constitutional provisions explanation is, however, usually desirable and should be given. A committee report should in all cases indicate what changes in an existing constitutional provision are being recommended.

Committees have ordinarily been appointed by the president of the convention, and this is the more satisfactory arrangement. As has been suggested, partisanship should be absent from the deliberations of a convention, but this, unfortunately, is not always the case, and where the person chosen as president is elected because of distinct partisanship the power of appointment is apt to be abused. In the New Mexico convention of 1910 the person chosen as president was a railroad attorney and apparently because of the fear that the convention might be charged with being under the control of corporations the appointment of committees was vested in a committee chosen by the convention itself.

Introduction of proposals: The committees must do the detailed work of the convention and each committee should have before it as soon as possible all of the proposals relating to the subject which it is to consider. In order to accomplish this purpose conventions have often definitely agreed that after a certain date no proposals should be entertained unless presented by one of the standing committees. In the New York convention of 1915 (which met on April 6) no proposed constitutional amendment could be introduced after June 11, except on the report or recommendation of a standing or select committee. The Massachusetts convention of 1917 met on June 6, and proposals of amendments were required to be presented by the close of the day of June 25. In the Ohio convention of 1912 the rules made the introduction of proposals more difficult after the first two weeks of the session. Members will usually present their proposals as soon as possible, because early introduction may make a proposal more influential, but some rule is necessary in order that committees shall have all proposals before them in the early days of a convention.

Many convention rules have very properly prescribed the form in which proposals shall be introduced, requiring that all proposals be in writing, contain but one subject and have titles. In the Ohio convention of 1912 all proposals were required to be presented in duplicate.

Committee of the whole: With respect to the general conduct of a convention's work the committee of the whole has been found a convenient instrument. In the Alabama convention of 1901, where this committee was not employed, there was much wrangling over rules and points of order. In the Virginia convention of 1901-02 objection was made to the committee of the whole on the ground that its use would lead to repetition of debate upon each subject, an objection which finds support in the Kentucky convention of 1890-91, but this objection is more than counterbalanced by the simpler method of procedure in committee of the whole. A committee of the whole, completely unrestricted, is probably undesirable, but a simpler procedure may be had in committee of the whole, and the convention may at the same time adopt rules which place some limitation upon acting in committee of the whole. The rules of the Michigan convention of 1907-08 seem fairly satisfactory for this purpose. "The rules of the convention shall be observed in committee of the whole, so far as they are applicable, except that the vote of a majority of said committee shall govern its action; it cannot refer a matter to any other committee; it cannot adjourn; the previous question shall not be enforced; the yeas and nays shall not be called; a motion to indefinitely postpone shall not be in order; a member may speak more than once. A journal of the proceedings in the committee of the whole shall be kept as in convention." A similar rule existed in the Ohio convention of 1912. The important portion of this rule is that requiring that a journal be kept of proceedings in the committee of the whole. Stenographic reports should also be made of debates in committee of the whole, as well as of debates in the convention.

Limitation of debate: Most conventions have begun their work practically without limitation of debate, although the previous question has been permitted. In the Michigan convention of 1907-08 any member could move the previous question but must be seconded by ten members and it could be ordered by a majority of those present and voting. In the Ohio convention of 1912 a two-thirds vote was necessary to sustain the previous question. In the New York convention of 1894 several rules limited debate. The previous question could be carried by a majority vote, and the committee on rules could, when ordered by the convention, report a rule limiting debate upon a particular question.

Obstructive tactics seem to have been resorted to by the minority in the New York convention of 1894 and a rule was finally brought in and adopted denying the ayes and noes on formal and dilatory motions. The Michigan convention somewhat late in its session limited the length of speeches in committee of the whole, and the Illinois convention of 1869-70 found it necessary to adopt a similar limitation. In the South Carolina convention of 1895 the expedient was adopted late in the session of appointing a steering committee, to apportion the time and direct the work of the convention.

Convention debate should be free enough to allow adequate consideration of every proposal, but experience has shown that if a convention starts its deliberations without any limitations upon debate a large portion of the time is likely to be taken up with excessive debate upon the earlier questions presented, so that the later work of the convention must be unduly rushed. It is wise for a convention to impose a moderate limitation upon debate at the outset, and such a limitation should exist not only for the convention itself but also for action in committee of the whole.

In the Michigan convention of 1907-08 the first committee appointed was one on permanent organization and order of business. This committee was afterward made permanent. It reported the plan of committee organization and made other reports during the session of the convention. One of its recommendations, which was adopted, provided for a weekly meeting of the chairmen of committees, to be presided over by the president of the convention, "at which meeting the chairmen of the several committees shall report progress and consider such other matters as may be of interest in advancing the work of the convention." Such a plan, if properly carried out, should do much to unify the work of a convention. In any organization of a convention there should be some central organization which will effectively direct the work and prevent loss of time. Much of the usual loss of time may be avoided by careful consideration in the first instance of the rules under which a convention is to proceed.

Editorial committee: A committee on phraseology and style is perhaps the most important single committee of a convention. Practically all conventions have had a committee of this type but the name of the committee has varied. In the Federal convention of 1787 there was a committee on style, and in the Illinois convention of 1869-70 there was a committee on revision and adjustment. A recess has often been taken by the convention so as to allow sufficient time for the work of this committee. In the greater number of conventions the committee on phraseology and style has been merely a proof-reading committee, and in some cases fear has been expressed lest this committee change the sense of proposals adopted by the convention. However, a committee is needed to do something more than the mere editorial work of removing inconsistencies in sense and language. The work of a convention is necessarily made up from reports of a number of committees and the proposals presented will naturally lack consistency in draftsmanship. The committee on phraseology and style should serve in large part as a central drafting organ to give unity to the work of a convention.

In the Michigan convention of 1907-08 effective use was made of a central drafting committee. Proposals introduced by members were read and referred to the appropriate committee; when reported by the committee they were taken up in committee of the whole, and when reported upon by the committee of the whole, were referred to a com-

mittee on arrangement and phraseology. The proposal when reported upon by this committee, was put upon its second reading and after second reading was voted upon. If adopted, it was again referred to the committee on arrangement and phraseology, which, after all proposed amendments had been considered, reported the complete revision as agreed upon, the convention taking a twelve-day recess in order to give time for this work. This revision was then considered by sections in the committee of the whole, was reported to the convention and was then put upon the third reading and voted upon by articles and as a whole. This procedure gave four different opportunities for the discussion and amendment of every proposal. But more important, it gave the committee on arrangement and phraseology great influence by allowing it an opportunity to revise the language of each proposal after it was agreed to in committee of the whole and before it was definitely adopted; proposals so revised came again to this committee to be consolidated into a complete constitution. As a result of this care the Michigan constitution of 1908 is the best drafted of recent state constitutions.

A somewhat similar use of its committee on phraseology and style was made by the Ohio convention of 1912. The consideration upon second reading was primarily upon the substance, and thereafter the proposal went to a committee on arrangement and phraseology and after the report of this committee it was presented for final action. The Ohio committee presented its reports in such a manner that each member of the convention had before him the original form of proposal adopted by the convention, the changes recommended by the committee, and the proposal as it would read if such recommendations were adopted.

In the Illinois convention of 1869-70 the committee on revision and adjustment was largely limited to detailed changes in language. The New York convention of 1915 and the Massachusetts convention of 1917-19 are of interest as presenting a fairly effective use of a similar committee. Of recent conventions those of Michigan (1907-08), Ohio (1912), and New York (1915), had the most satisfactory rules.

The rules of the New York convention of 1894 were based too much upon partisan considerations. The rules of the Massachusetts convention of 1917-19 are open to objection in that they allow absolute freedom of debate in committee of the whole, and tend to permit too great a degree of debate upon the measures first presented to the convention.

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V. GENERAL OUTLINE OF STATE CONSTITUTIONAL DEVELOPMENTS SINCE 1776.

In this and other states there are two methods of constitutional change. One is through the assembling of a convention and the other is through the proposal of specific amendments. The proposal of specific amendments may be made in a number of states not only by the legislative bodies but also by initiative petition. New Hampshire is the only state which does not provide for the proposal of amendments through legislative action. In New Hampshire the only method of constitutional change is that by a constitutional convention and in that state the question of holding a constitutional convention is submitted to the voters once each seven years.

With increasing detail in the state constitutions, the constitutional convention and the processes of specific constitutional amendment have become important legislative processes, not only for matters of fundamental importance but also for matters not properly fundamental in character. The increasing bulk of state constitutions and the consequent necessity for frequent alteration, have brought with them easier processes of constitutional change, and in a number of states at the present time the process of constitutional change is not more difficult than that of statutory change.

In this discussion an effort will be made to sum up first of all the general lines of state constitutional development in this country since 1776 and then to outline more in detail the specific changes which have taken place since 1900. The main lines of constitutional development from 1776 to the present time may be summed up under the following headings:

Development of the departments of government. In the first state constitutions the legislatures occupied a predominant position. The struggles of the colonial period between a popularly elected assembly on the one hand, and the governor (who controlled the council as an upper legislative body and the courts) on the other hand, naturally led the framers of new constitutions for independent states, to distrust the executive branch of the government and to concentrate almost complete powers in the hands of the legislative bodies. The first sixty years of constitutional development (1776-1836) were largely a period during which there was a readjustment of the equilibrium as among the three departments of government.

In most of the earlier state constitutions provision was made for the election of the governor by the legislature, and executive councils

dominated by the legislatures further restricted the executive power in a number of the states. The governor possessed little power of appointment, for most important offices were filled by the legislature, and under the first state constitutions his control over legislation was slight.

But a distrust of the legislature soon arose, in part because of the large powers which it had, and in part because it exercised these powers unwisely. The New York constitution of 1777 made the governor a popularly elected officer, as did the Massachusetts constitution of 1780, and the New Hampshire constitution of 1784, and practically all state constitutions after this period adopted the policy of popular election, the Virginia constitution of 1830 being a notable exception to this statement. A lengthening term of office at the same time gave the governor greater opportunity to exercise his powers, as did also the discarding by most states of the cumbersome and ineffective executive council. With respect to the important executive offices of the state the power of the governor in most cases was not greatly increased but the power of the legislatures and their control over the executive was reduced by making such officers elective directly by the people—a movement whose influence may be traced by a comparison of the Michigan constitutions of 1835 and 1850. By the New York constitution of 1777 the executive appointing power was large but was confined largely to a council of appointment whose members were during much of the time out of harmony with the governor. This council of appointment disappeared in New York in 1821, and the governor's appointing power has gradually tended to increase throughout the United States—by virtue of the fact that the state governments have steadily become more complex and assumed new functions, thus increasing the number of appointive officers.

There has also been a steady increase in the governor's power over legislation. Of the earlier state constitutions, that of South Carolina (1776) vested an absolute veto in the president of the state, but this power was only once sought to be exercised and was withdrawn by the constitution of 1778. The New York constitution of 1777 provided a council of revision of which the governor was a member, which should have a suspensory veto, and a plan somewhat similar to that of New York existed in Illinois from 1818 to 1848. The Massachusetts constitution of 1780 was the first to give the governor acting alone a suspensory veto over legislation which might be overcome by action of an extraordinary majority ($\frac{2}{3}$) in the legislative houses. The New Hampshire constitution of 1784 was largely copied from that of Massachusetts, but the provisions for an executive veto of legislation was rejected by New Hampshire. The provision of the federal constitution of 1787 with respect to the presidential veto has been followed in principle by most of the subsequent state constitutions. Georgia (1789), New Hampshire (1792) and Kentucky (1792) followed the federal precedent by giving their governors a veto power. New York abolished its council of revision in 1821 and conferred this power upon its governor acting alone. As the states adopted new

constitutions it became usual for the veto power to be conferred, and although several states have only recently conferred upon their governors a negative over legislation, North Carolina today is the only state whose governor has no veto power.

The governor's veto power over legislative action has been so extended that in more than two-thirds of the states he now also has power to veto separate items in appropriation bills; the constitutions of Washington and South Carolina in addition confer upon the governor power to veto any section or sections of a bill presented to him, and to approve other portions of the bill so presented.

The executive department has thus in its organization and powers become stronger, and its gain in power has been largely at the expense of the legislature. Somewhat the same development has taken place with respect to the judicial department. In most of the first constitutions the judges were chosen by the legislative bodies, although in several states there was executive appointment, subject to confirmation by the executive council or upper branch of the legislature. The power of appointment was in most cases gradually taken from the legislature; this power in some states was at first conferred upon the governor, but the movement for popular election, which gained force from 1830 to 1850, has extended popular choice to judicial as well as executive officers. The legislative power of impeachment has continued in many states, and to it has been added in a number of cases an executive power of removal upon address by the legislative bodies.

But the most important power acquired by the judicial department in this country has been that of declaring invalid laws which in the opinion of the judges conflict with the constitution. The exercise of this power was not contemplated by the earlier state constitutions, but the courts which in our earlier state governments really occupied a subordinate position, were able to assume such power, largely because of the early developed distrust of the legislatures and of the feeling that some check upon legislative power was needed. The judicial power over legislation, once established, has steadily grown, in part by the assumption by the courts on their own motion of more extensive and detailed supervision over legislation, and in part also because the state constitutions have steadily added an increasing number of limitations upon legislative action, such limitations being subject to judicial enforcement, under the theory of judicial control as to the constitutionality of legislation.

Limitation upon legislative power. Reference has already been made to the fact that constitutional legislation has steadily increased in the states at the expense of ordinary legislation—that through revision or amendment much matter properly of a statutory character has been introduced into the state constitutions, thus limiting the power of the regular legislative bodies. In addition legislative power is strictly limited by a series of specific prohibitions which have from time to time been introduced into the constitutions.

The first series of important limitations may be said to have resulted from the state internal improvement movement which gained force after 1830. The people of many states were carried away by a wild frenzy for internal improvements to be constructed at state expense, and plans often immature and impracticable were forced upon state legislatures; failure was almost sure to result. As a result of unwise plans adopted by the states during the period from 1830 to 1850 practically all of our constitutions now have strict limitations upon state indebtedness. "As the people had driven their representatives to enter upon internal improvements without caution, so when taxes began to press, they censured them without justice and disowned the policy."

The states having excluded themselves from the field of internal improvements, their place was taken by private corporations. These private corporations in their turn appealed for financial aid to the minor civil divisions of the state, upon whom no constitutional limitations had yet been placed, and which might aid railroads and other enterprises either under their general powers or under powers conferred for that purpose by the legislatures. The legislatures here again yielding to popular pressure permitted the civil divisions of their states to loan their credit heavily to projected railways and other similar enterprises. Here, too, unwise management brought financial disaster, and as a result constitutional limitations were adopted by which municipalities and other local divisions of the states are forbidden to loan their credit in aid of such enterprises or to incur indebtedness beyond certain fixed limits.

In a somewhat similar manner the early banking experiences of the states—and especially the abuses arising out of state participation in banking and out of legislative grant of bank charters—produced a series of constitutional limitations upon the passage of state banking laws. In the case just referred to the legislatures acted unwisely, but they acted under pressure of the people, and cannot be held entirely responsible for the abuses which resulted. The people insisted upon legislative policies which resulted in disaster and then after the injury had been done they imposed strict limitations upon their legislatures.

In many matters, limitations have been imposed upon legislatures as a result not so much of legislative incompetence or corruption as of actions resulting from popular pressure. But other classes of limitations have been the direct result of abuses for which the legislatures alone were primarily responsible—as with respect to favoritism in granting charters to private companies, the passage of local and special legislation, etc. And on account of abuse of power by legislative bodies we now have a series of strict limitations upon local and special legislation and upon the methods of legislative action.

These limitations, which have been steadily growing in number, have decreased the power and influence of legislative bodies. And the popular distrust of legislatures, fostered in part by measures enforced by popular sentiment, and in part also by the incompetence of the legislatures themselves, has caused the adoption of constitu-

tional provisions limiting the terms of legislative sessions, and providing that such sessions should be held biennially (and in Alabama quadrennially) rather than annually as under the earlier constitutions.

Popular share in legislation. During the past twenty years there has been a pronounced tendency to reduce legislative power still further through the introduction of the initiative and referendum.

The introduction of the initiative and referendum involves a greatly increased popular share in the legislation of the states, but this is only one step in a movement toward greater popular participation in government which has been going on since the establishment of independent states. The American Revolution was in its early stages a democratic movement, and in several states led to an extension of the suffrage and to the reduction of property qualifications for the holding of offices, but control of our first state governments was confined in great part to the propertied classes. The following steps may be pointed out as ones tending toward greater popular participation in government: (1) The extension of suffrage and abolition of property qualifications for voting—a movement which gained force after 1800 and which became triumphant during the first three decades of the nineteenth century, although Virginia held out until 1850. (2) The somewhat similar movement for the abolition of property qualifications for office, which covered the same period. (3) The movement which led to the selection of the more important state and local officers by popular vote, as a substitute for their appointment by the legislature or by the executive. This movement has been referred to above in connection with the choice of executive and judicial officers. This development took place in large part during the second quarter of the nineteenth century. (4) The movement for municipal home rule—for the framing of charters by cities or local divisions themselves—a movement which began in Missouri in 1875 and which has spread to a number of other states since that time. This movement involves a diminution of state legislative control over cities. (5) The movement for the popular recall of state and local officers. (6) Woman's suffrage.

VI. STATE CONSTITUTIONAL DEVELOPMENTS SINCE 1900.

The period since 1900 has been an active one in the field of state constitution making. Attention has already been called to the fact that changes in the texts of state constitutions take place in two ways: (1) through the proposal of specific amendments either by the legislatures or by initiative petition and (2) through the calling of constitutional conventions.

Since 1900 new constitutions have been adopted in Alabama (1901), Virginia (1902), Oklahoma (1907), Michigan (1908), Arizona and New Mexico (1911) and Louisiana (1913). All of these constitutions were proposed by constitutional conventions, although attention should be called to the fact that the Louisiana constitution of 1913 is primarily a mere re-editing of the constitution of 1898.¹

Proposed constitutions submitted by constitutional conventions were rejected by Connecticut (1902), New York (1915), and Arkansas (1918). Proposed constitutions were drafted by legislative bodies in Indiana (1911) and in Connecticut (1907). The proposed Indiana constitution was never submitted, its submission being enjoined by judicial action;² and the proposed Connecticut constitution of 1907 was rejected. Constitutional conventions in Ohio (1912), Massachusetts (1917-19), and New Hampshire (1902, 1912) submitted proposals of amendment rather than complete constitutions. Constitutional conventions will assemble in New Hampshire and Nebraska late in 1919. The Illinois constitutional convention will meet in January, 1920. Constitutional commissions appointed for the purpose of recommending constitutional changes are now at work in Vermont and Pennsylvania. The Massachusetts constitutional convention, which assembled in 1917, held sessions also in 1918 and 1919.

By the proposal of individual amendments either by legislative bodies or through popular petition, a great deal in the way of constitu-

¹ For a further discussion of the work of recent constitutional conventions see the following articles: McKinley, A. E. Two New Southern Constitutions. *Political Science Quarterly*, XVIII, 480; Sanborn, J. B. The Oklahoma Constitution. *American Law Review*, XLII, 362; Fairlie, J. A. The Constitution of Oklahoma. *Michigan Law Review*, VI, 105; Fairlie, J. A. The Michigan Constitutional Convention. *Michigan Law Review*, VI, 533; Updyke, F. A. New Hampshire Constitutional Convention. *American Political Science Review*, VII, (1913) 133; Benjamin, Gilbert G. Attempted Revision of the State Constitution of New York. *American Political Science Review*, X, 20 (1916); Thomas, David Y. Constitution Making in Arkansas. *American Political Science Review*, XIII, 87 (1919).

² *Ellingham v. Dye*, 178 Ind. 336 (1912). The question of holding a constitutional convention was submitted to a popular vote in Indiana in 1914 and rejected. The legislature then provided for a convention to meet without a popular vote as to whether one should be called, and an injunction was issued to prevent such a convention. *Bennett v. Jackson*, 186 Ind. 533 (1917).

tional change has been proposed and accomplished since 1900. Since 1900, 1504 constitutional amendments have been proposed in the 48 states, of which 904 have been adopted and 600 rejected. Of this number 150 proposed amendments were submitted in California, 134 in Louisiana, 88 in Oregon, 52 in Colorado and Georgia, 57 in New York, 71 in Ohio, 51 in South Dakota and 50 in Michigan. Upon matters relating to taxation alone 257 proposed amendments have been submitted in the several states between 1900 and 1918, of which 142 were adopted.

Certainly not more than one out of four of the proposed amendments in the several states has related to any matter of fundamental importance. The greater number of the amendments have related to matters of no great importance, and probably half of them to matters which would not have been regarded as important even if they had been the subjects of legislative enactments. For example, there were constitutional amendments in North Dakota in 1904 and 1914, changing the names of state charitable institutions, and in the same state in 1904 and 1916 establishing institutions for the feeble-minded and for the insane. In South Carolina a group of communities desires each two years to be relieved from the constitutional debt limits, and there seems to be no difficulty about obtaining a legislative proposal of amendment and a popular approval of an amendment for this purpose. The constitutional debt limit in South Carolina has become by this means an adjustable one for the communities which desire relief from it through action in each biennial period. The proposal of amendments by the legislative process necessarily tends to become greater in each biennial period, for each set of proposed amendments in any state is adding more of detail to the constitution and this detail must be changed at frequent intervals.

The chief lines of development in state constitutions since 1900 are set forth below:

Popular participation in government. Suffrage qualifications have received a great deal of attention during this period, and the matters dealt with in connection with suffrage fall into several distinct classes: (a) Suffrage restrictions in the south, primarily aimed at Negro suffrage; (b) The withdrawal of the right to vote in a number of states from non-citizens; (c) The extension of woman's suffrage.

With respect to suffrage qualifications aimed primarily at the restriction of negro suffrage in the south, there were changes in the revised constitutions of Alabama and Virginia in 1902 and constitutional amendments in North Carolina (1900), Georgia (1908) and Louisiana (1912). The Louisiana amendment of 1912 merely supplemented the provisions with respect to suffrage first introduced into the Louisiana constitution in 1898. Oklahoma in 1910 adopted restrictions which were declared unconstitutional by the United States Supreme Court in the case of *Guinn v. U. S.* 238 U. S. 347.

With respect to voting by non-citizens Colorado (1902) changed its constitution so as to make citizenship a prerequisite, and the same action was taken by Wisconsin in 1908, Oregon in 1914 and Kansas in 1918.

With respect to woman's suffrage, the development during this period has been an active one although in a great many cases proposed amendments have been rejected. In Oregon proposals for woman's suffrage were rejected in 1900, 1906, 1908 and 1910, but an amendment for this purpose was finally adopted in 1912. The states in which constitutional amendments have granted full woman's suffrage since 1900 are Washington (1910), California (1911), Arizona (1911), Kansas and Oregon (1912), Montana and Nevada (1914), New York (1917), Michigan, Oklahoma and South Dakota (1918).

The constitutional development with respect to woman's suffrage tells only a part of the story as to this subject. Broad statutory extensions of woman's suffrage have taken place rapidly since the Illinois legislation upon this subject in 1913, and in Illinois, North Dakota, Tennessee and Nebraska women are by statute permitted to vote for presidential electors and for a number of other officers. In Indiana, Iowa, Maine, Minnesota, Missouri, Ohio, Rhode Island and Mississippi women are allowed now to vote for presidential electors. The statutory development in the matter of woman's suffrage has accomplished during the latter part of the period here under discussion very nearly as much as the constitutional development. State constitutional and statutory activities are likely soon to be supplemented by the ratification of the Federal woman's suffrage amendment.

Earlier judicial decisions against the use of voting machines led to constitutional provisions authorizing such machines in Pennsylvania (1901), California (1902), Virginia (1902), Connecticut (1905), Colorado (1906), and Massachusetts (1911). The movement in favor of voting machines seems to have languished after the first decade of the nineteenth century, and proposed amendments to permit the use of voting machines were rejected in Missouri in 1910 and in Ohio in 1912.

Decisions with respect to primary elections made necessary a constitutional amendment in California in order to enact primary legislation. The California amendment of 1900 was somewhat detailed and had to be amended again in 1908. Oklahoma in 1907 and Ohio in 1912 also adopted constitutional provisions with respect to primary elections.

The subject of absent voting has been an active one during the past few years, and a number of constitutional amendments have dealt with this subject. Probably in most cases such amendments were unnecessary but the subject was one of popular interest and such a subject is apt to come into constitutional amendments irrespective of whether an amendment is necessary in order to permit legislative action. However, it should be borne in mind that during the Civil War a number of laws were held unconstitutional which made provision for absent voting by soldiers. Constitutional amendments with

respect to absent voting were adopted in Michigan (1914, 1918), Massachusetts (1917), and Maryland (1918).

Oregon adopted a constitutional provision authorizing proportional representation in 1908, but nothing has yet been done under this provision. Massachusetts in 1918 adopted a constitutional amendment permitting the General Court of that state to establish compulsory voting. Rhode Island in 1911 and Massachusetts in 1918 changed the terms of various officers from annual to biennial and at the same time departed from the system of annual elections.

An important development in the field of popular participation in government has been that with respect to the initiative, referendum and recall. South Dakota in 1898 was the first state to adopt the initiative and referendum. Since that time these institutions have steadily spread until now the initiative and referendum are established by the constitutions in South Dakota (1898), Utah (1900), Oregon (1902, 1906), Nevada (1904, 1912), Montana (1906), Oklahoma (1907), Maine (1908), Missouri (1908), Arkansas (1910), Colorado (1910), Arizona (1911), New Mexico (1911), California (1911), Idaho (1912), Ohio (1912), Nebraska (1912), Washington (1912), Michigan (1908, 1913), North Dakota (1914, 1918), Mississippi (1914), Maryland (referendum 1915), Kansas (1914), Louisiana (1914), and Massachusetts (1918). The Utah and Idaho amendments are merely directory to the legislatures of those states, and legislation making the Utah amendment effective was not enacted until 1917; no legislation bringing these institutions into operation has yet been enacted in Idaho.

In a number of states that have adopted the initiative and referendum, efforts have been made by subsequent constitutional amendments to restrict these institutions or to impose limitations upon their use. In every case restrictive proposals have been rejected by the people.

The initiative and referendum provisions of the various states will be fully analyzed in another publication, and the purpose here is merely to call attention to the extent to which they have developed, and to indicate the importance of this movement as one concerning the extended share of popular participation in government.

The recall has had a similar development, although this development began much later than that of the initiative and referendum. Recall provisions now exist in Oregon (1908), California (1911), Arizona (1911, 1912), Colorado (1912), Idaho (1912), Nevada (1912), Washington (1912), Michigan (1913), Kansas (1914), and Louisiana (1914). An Arkansas constitutional amendment adopted by popular vote in 1912 was declared unconstitutional by the Supreme Court of that State.¹

A Colorado constitutional amendment of 1912 adopted the so-called recall of judicial decisions. Since 1914 the movement for the recall seems to have lost momentum.

The initiative and referendum have in a number of states been applied to constitutional amendments as well as to the enactment of

¹ State ex rel Little Rock v. Donaghey, 106 Ark. 56 (1912).

ordinary legislation. In addition to this there has been a fairly definite tendency to make the process of constitutional amendment easier, although an exception may be suggested with respect to the New Mexico constitution of 1911. Colorado (1900), Oregon (1906), Ohio (1912), and North Dakota (1918) have simplified the process of constitutional change, and the same may be said of the amending provisions in the Alabama constitution of 1901.

Another movement which may be said to be directly in the line of making easier popular participation in government is that with respect to the short ballot. With the increasing complexity of government, it may properly be said that oftentimes a means of increasing popular control over government will result from reducing the number of persons for whom each elector is expected to cast his ballot. When a certain point is reached in the election of officials, the addition of other elective offices tends to complicate the issue before the people and to remove attention from important offices, which can be otherwise held to a responsibility for the conduct of public affairs. During the period under review little has as yet been done by constitutional change toward the reduction of elective officers. By an Ohio constitutional amendment in 1912 provision was made for the appointment of a superintendent of public instruction, and one officer previously elective under statutory provisions in Ohio was thus removed from the ballot. By statute also in Ohio, a public works commissioner and a dairy and food commissioner have been removed from the ballot. Indiana in 1919 by statute removed the state geologist and the state statistician from the ballot, and proposed constitutional amendments in Indiana will if adopted provide for the appointment rather than the election of the superintendent of public instruction and of the clerks of the Supreme and Appellate Courts.

California in 1911 by constitutional amendment removed the Clerk of the Supreme Court and the railroad commissioners from the ballot and California has also discontinued the election of its public printer. Iowa in 1913 by legislation removed the Supreme Court Clerk and Reporter from the ballot. However, two proposed amendments in Ohio in 1913 for the reduction of elective state and local officers were rejected by the people. In Tennessee, the state treasurer and controller are still chosen by the vote of the two houses. The people of that state in 1904 rejected a proposed constitutional amendment making these officers popularly elective.

The executive department. Some important developments have taken place since 1900 with respect to the powers and organization of the departments of the state government. The tendency to increase the governor's powers has continued. The veto power has been extended. A constitutional amendment in Ohio in 1903 vested an extensive veto power in the governor which could be overcome by a two-thirds vote of the two houses of the legislature, but an amendment of 1912 reduced to three-fifths the legislative majority required to

overcome a veto. Rhode Island for the first time conferred a veto power upon her governor in 1909. Vermont in 1913 adopted a constitutional amendment requiring a two-thirds vote of the two houses to overcome the governor's veto. Before this time the veto in Vermont could have been overcome by a mere majority vote.

Virginia (1902), Ohio (1903), Oklahoma (1907), Michigan (1908), Kansas (1904), Arizona (1911), New Mexico (1911), Oregon (1916), and Massachusetts (1918), granted to the governor the power to veto items of appropriation bills. California in 1908 and Wisconsin in the same year extended the period within which the governor was required to exercise his veto power. With respect to control over appropriations, attention should also be called here to the increased executive power conferred by the budget amendments of Maryland (1916), Massachusetts (1918), and West Virginia (1918).

Ohio by constitutional amendment in 1903 conferred upon its governor power to veto any section or sections of a bill presented to him, and to approve other portions of the bill so presented, following in this respect the Washington constitution of 1889, and the South Carolina constitution of 1895. However, this power to veto sections of any bill was withdrawn in Ohio by constitutional amendment of 1912. The Alabama constitution of 1901 permits the governor to propose an amendment to remedy any feature of a bill which he does not approve, and if his proposed amendment is not adopted by the two houses, the bill in order to become a law must be passed over the executive veto. The Virginia constitution of 1902 also gives the governor power to recommend the amendment of a bill if he approves its general purpose but disapproves any part thereof, and in this state the bill if amended by the two houses or if they fail to amend it in accordance with the governor's recommendation, is again returned to the governor for his approval or disapproval. A Massachusetts constitutional amendment adopted in 1918 provides: "The governor, within five days after any bill or resolve shall have been laid before him, shall have the right to return it to the branch of the general court in which it originated with a recommendation that any amendment or amendments specified by him be made therein. Such bill or resolve shall thereupon be before the general court and subject to amendment and re-enactment. If such bill or resolve is re-enacted in any form it shall again be laid before the governor for his action, but he shall have no right to return the same a second time with a recommendation to amend."

As a part of the proposed New York constitution of 1915 an elaborate re-organization of the executive department was provided for. The proposed New York constitution was rejected. A Massachusetts constitutional amendment adopted in 1918 provides for a re-organization and consolidation of executive offices in that state. Little has yet been accomplished through constitutional change with respect to the consolidation and simplification of the state executive organization. However, in this field a great deal has been accomplished by statute. Rather thoroughgoing consolidations in the field of state executive organization have been accomplished by statu-

tery provisions in the state of New Jersey. However, perhaps the most important single change was that made by legislation in the state of Illinois in 1917, and the Illinois plan has been to a large extent copied by legislation in 1919 in Idaho and Nebraska. While a good deal needs to be done by constitutional change in the field of state executive organization, attention should be called to the fact that the detail of executive organization should not be placed in a constitution. The New York plan with respect to this matter was a bad one, and it would be highly unwise to place in a new constitution of Illinois the details of the executive organization as worked out in the civil administrative code enacted in 1917.¹

The power of the governor has also been increased in other respects. The Virginia constitution of 1902 authorizes the governor to suspend executive officers of the state during the recess of the general assembly, the general assembly itself to decide at its next meeting whether the suspended officer shall be restored or removed. The governor of Oklahoma is given power to require information in writing under oath from all officers and commissioners of the state and from all officers of state institutions. By the Alabama constitution of 1901 and by the Michigan constitution of 1908 the governors are given increased power to require information in writing from the executive and administrative officers of these states. By statute in Minnesota in 1917 the governor is granted power to remove statutory officers. By legislation in Illinois in 1905 the governor is under certain conditions authorized to remove sheriffs, and in Oregon in 1917 by legislation the governor was authorized to remove county clerks. In Maine in 1917 by constitutional amendment the governor was vested with power to remove sheriffs.

The power of the governor has been to a large extent increased by developments in the states with respect to the budget. These developments have to a large extent been statutory, but a number of important constitutional proposals have been made and adopted. Budget amendments vesting a large power in the governor to submit estimates to the legislatures, and depriving legislatures of the power to make increases in estimates so submitted have been adopted in Maryland (1916), Massachusetts (1918) and West Virginia (1918). A similar constitutional amendment is pending in Indiana. Virginia in 1918 by statute adopted budget proposals similar to those existing in Maryland by constitutional amendment. A proposed budget amendment, which was unsatisfactory and which would have reduced the power of the governor, was rejected by popular vote in California in 1918. Budget proposals, similar to those adopted in Maryland, Massachusetts and West Virginia, constituted a part of the proposed constitution rejected in New York in 1915. Illinois in 1917 adopted plans for a budget by statute, and statutory plans for a budget have within recent years been adopted in substantially three fourths of the states.¹

¹ See Moley, Raymond. *The State Movement for Efficiency and Economy*. Municipal Research No. 90 (Oct., 1917).

¹ Buck, A. E. The present status of the executive budget in the state governments, *National Municipal Review*, VIII, 422 (August, 1919).

The legislative department. With respect to the organization and procedure of the legislative department little has been accomplished since 1900. To some extent the tendency to reduce the frequency of legislative sessions has continued. Iowa (1904) has established biennial sessions as a substitute for the previous plan of annual sessions. In 1906 the voters of South Carolina voted in favor of biennial sessions, but the legislature did not approve the proposed amendment after the popular vote in its favor. However, Mississippi (1910) returned from quadrennial to biennial sessions. The plan of departing from the quadrennial plan and re-adopting biennial sessions was rejected in Alabama in 1916.

There has in recent years been a good deal of agitation for a single-chambered legislature and plans for a single chamber have been submitted in Oregon (1912, 1914), Oklahoma (1914), and Arizona (1916). In all of these states the proposal for a single chamber was rejected. In 1908 the voters of Oregon adopted an amendment authorizing the establishment of proportional representation by law, but nothing has been done under this amendment, and an amendment proposed in 1914 for the establishment of proportional representation in the election of members of the lower house of the legislature was rejected by popular vote. Substantially the only other proposed change with respect to the organization of the legislature was that in Ohio in 1913 when it was proposed to reduce very materially the size of the two houses of the legislature. This proposal was rejected by popular vote. With respect to fundamental changes in legislative organization, it may perhaps be said that a vigorous movement has been under way, but that this movement is still in its infancy and has not yet been strong enough to make itself felt in constitutional provisions.

With respect to matters of procedure there have been a number of proposals. Michigan in 1904, California in 1908 and Colorado in 1918 adopted amendments having to do with restrictions upon the time of introducing bills. California in 1911 provided for a thirty-day recess of the legislature and for the introduction of bills prior to such recess unless the consent of three-fourths of the members could be obtained. Massachusetts (1918) adopted an amendment authorizing the general court of that state to take a recess similar to that required by the constitutional amendment of California in 1911.

The voters of Arkansas in 1912 adopted an amendment limiting legislative sessions to sixty days, but this amendment was declared invalid by the supreme court of that state. The voters of Connecticut in 1912 adopted a limitation upon the length of legislative sessions. In Wyoming in 1914 the voters rejected a proposal extending the legislative session from forty to sixty days. In 1912 Ohio adopted a constitutional amendment with respect to special sessions, and by this amendment no business may be transacted at a special session other than that named in the proclamation calling the session or in a subsequent proclamation by the governor during the session.

The subject of legislative apportionment is one which has given rise to a good many proposals of amendment during the period here

under review, but on the whole the amendments adopted seem not to have accomplished a great deal. Connecticut and Maryland in 1901 adopted amendments which to some extent give a more equitable apportionment of representatives. Proposed amendments in Rhode Island in 1902 and 1905 and in New Hampshire in 1903 and 1912 for a more adequate representation of larger communities failed of adoption. However, in Rhode Island (1909) a constitutional amendment was adopted which betters to some extent the representative system of that state. Wisconsin in 1910 adopted a provision for decennial apportionments. Idaho (1912), Mississippi (1914), Maine (1917), and Arizona (1918) adopted constitutional provisions with respect to apportionment.

Kansas in 1906 and Michigan in 1908 adopted constitutional provisions vesting in the courts the power to determine when special laws should be passed. The constitutions of Alabama (1901), Virginia (1902), and Oklahoma (1907) impose strict limitations upon local and special legislation, and a North Carolina amendment of 1916 imposes similar restrictions. The Michigan constitution of 1908 definitely limits special legislation but does not enumerate in detail the subjects upon which special laws may not be passed. The Michigan constitution provides that the legislature shall pass no local or special act where a general act can be made applicable, and the question whether a general act could have been applicable is made a question not for the legislative determination but for the decision of the court. By the Michigan provision also local and special acts do not take effect until after they have been approved by a majority of the electors voting thereon in the district to be affected by such acts. The Michigan plan is proving perhaps the most effective one for the reduction of local and special legislation.¹

The most important single development with respect to legislatures during the period under review is one which has led to an increase in legislative power. Constitutional limitations upon the powers of the legislature have usually been imposed when some power has been exercised unwisely, and it is perhaps not too much to say that in most such cases the power which has been exercised unwisely has been so exercised under popular pressure. Limitations so imposed come at some later time to interfere with powers which the people desire to have the legislature exercise, and a development then begins of precisely the reverse order. That is, the people begin by constitutional change to confer upon their legislatures powers which have previously been withdrawn by constitutional changes.

Perhaps the most important types of constitutional limitations upon the legislature in this country are those which relate to debt limits and to the prohibition of undertaking other than governmental functions by the states. In recent years there has been a distinct tendency away from these limitations.

California (1902), Michigan (1905 and 1919), New York (1905), Kentucky (1909), Maine and Ohio (1912), North Dakota

¹ See Merrills, F. E. Some aspects of judicial control over special and local legislation, *American Law Review*, Vol. 47, p. 351 (1913).

(1914), Wyoming (1916), and Louisiana and Pennsylvania (1918) have definitely loosened constitutional restrictions with respect to road construction, and this has meant at the same time a lessening of limitations with respect to debt-contracting power. Ohio (1912), Texas (1917), and Massachusetts and South Dakota (1918) have expressly authorized state activities with respect to conservation. Water power and forestry activities have also been authorized by constitutional amendments in Wisconsin (1910), New York (1913, 1918), and Minnesota (1914).

With respect to hail insurance the states of North Dakota and South Dakota expressly authorized state activities in 1918, although a similar proposal was rejected in Minnesota in 1908 and 1910. Farm loans were authorized by constitutional amendments in Oregon and South Dakota in 1916. South Dakota in 1918 authorized state activities with respect to elevators and the manufacture of cement. North Dakota in 1912 and 1914 authorized state activities with respect to the operation of elevators, South Dakota in 1916 and 1918 with respect to the mining and distribution of coal, and the same state in 1918 with respect to the development of electric power. A South Dakota amendment of 1918 expressly authorizes the state to engage in internal improvements, or to give or loan its credit in aid of such improvements. In North Dakota, by an amendment of 1918 "the state, any county or city, may make internal improvements and may engage in any industry, enterprise or business," other than the sale of liquor.

In 1917 a constitutional amendment in Massachusetts authorizes the state and its municipalities to maintain and distribute during public exigency, emergency or distress, a sufficient supply of food and other common necessities of life, and to provide shelter. This amendment was rendered necessary by opinions of the supreme judicial court of Massachusetts opposed to the exercise of such powers. In 1918 a constitutional amendment in Massachusetts authorized the use of the power of eminent domain for the purpose of taking natural resources, including water and mineral rights, for purposes of conservation.

The courts. With respect to the organizations of courts, perhaps the most important single development has been that toward the increasing of membership in the highest state court or the creation of intermediate appellate courts. The American judicial system has been so organized as to bring a heavy pressure upon appellate courts, and less attention on the whole has been paid to the trial courts than to the appellate courts. Such a situation is undesirable, but so long as a large proportion of cases are to be taken to appellate courts, some provision must be made for the determination of such cases.

Kansas (1900), Florida, (1902), West Virginia (1902), Wisconsin (1903), Colorado (1904), Nebraska (1908, 1912), North Dakota (1908), South Carolina (1910), and Mississippi (1914) have all provided for increasing the number of members of their highest state courts; and Florida, Colorado and Mississippi provided in addition for the separation of the highest state court into divisions.

California (1904, 1918), Georgia (1906, 1916) and Ohio (1912) have provided for intermediate courts of appeal.

With respect to the judges themselves there have been a few constitutional provisions as to appointment, tenure and retirement. Louisiana in 1904 made the judges of the supreme court elective rather than appointive, and the same step was taken by Mississippi with respect to judicial offices in 1910 and 1914. In 1905 Ohio provided for the lengthening of terms of judges and South Carolina in 1910 extended the term of justices of the supreme court from eight to ten years. On the other hand, Mississippi in 1914 reduced the term of supreme court judges from nine to eight years. From the standpoint of retirement of judges, perhaps the most important constitutional developments are those in Louisiana in 1910, by which judges of the supreme court who have served for fifteen years and reached the age of 75, may retire on full pay. A further amendment in 1918 permits the retirement of judges of lower courts at the age of 75, provided they have served a period of 25 years.

With respect to the removal of judges, a Massachusetts constitutional amendment of 1918 provides that the governor "with the consent of the council may after due notice and hearing" retire judges because of advanced age or mental or physical disability. The Massachusetts amendment further provides that such retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement. The Massachusetts provision with respect to the removal of judges should of course be read with the power of the governor to appoint judges and with the provisions of the Massachusetts constitution for judicial tenure during good behavior.

In New Jersey a proposed judicial re-organization was rejected by popular vote in 1909. To come to lesser matters with respect to judicial organization, it may be repeated that California in 1909 by constitutional amendment made the clerk of the supreme court of that state appointive rather than elective.

California in 1911 and 1914 adopted constitutional amendments with respect to the setting aside of judgments in criminal cases for immaterial errors. Ohio in 1912 by constitutional amendment expressly authorized legislative action with respect to the subject of expert testimony.

The jury system has been the subject of some constitutional legislation during the period since 1900. Missouri (1900), Oregon (1910), Ohio (1912) and Mississippi (1914), permit verdicts in civil cases by less than a unanimous jury.

With respect to the grand jury also there has been some development, constitutional provisions as to informations and indictments having been adopted in Missouri (1900), Minnesota (1904), Oregon (1908) and Nevada (1912).

With the respect to the exercise of judicial power, the two matters of most importance within recent years have been those with respect to the punishment of contempts and the power of the courts to declare laws unconstitutional.

Oklahoma in 1907 adopted a constitutional provision regarding trial for contempt of court; but Colorado and Ohio in 1912 rejected proposed constitutional amendments dealing with this subject. Ohio in 1912 and North Dakota in 1918 adopted constitutional amendments prohibiting the declaration of a law unconstitutional if more than one judge of the highest state court dissented. Minnesota in 1914 rejected a similar proposal. Colorado in 1912 adopted the so-called recall of judicial decisions, by which a decision of the court declaring a statute unconstitutional may be overcome by popular vote.

Taxation. Since 1900 there has been a large and increasing number of constitutional amendments on taxation. From 1900 to 1906, 48 proposed amendments were voted on, of which 38 were adopted and 10 failed. From 1907 to 1918, 209 amendments were submitted, of which 104 were adopted and 105 failed.

This movement has been widespread. One or more amendments have been submitted in all but six states (Vermont, Connecticut, Rhode Island, Delaware, New Jersey and Indiana). But some states have been much more active than others. Proposed amendments have been most numerous in Louisiana (35), California (30), and Missouri (23); and have also been frequent in Oregon (18), Utah (13), South Carolina (14), Minnesota (11) and Ohio (10). In Missouri and Minnesota most of the amendments proposed have been defeated.

A large number of these proposed amendments have been on matters of minor importance, such as changes in tax rates and methods of administration, taxes for specific purposes, small changes in exemptions, and (in South Carolina) granting authority for special assessments to particular cities and towns. But important changes in taxation have also been proposed and adopted.

Provisions authorizing the classification of property for purposes of taxation have been submitted in twenty states (in some states on several occasions), and have been adopted in eleven states: Minnesota, Michigan, Oklahoma, New Mexico, Arizona, Louisiana, Kentucky, North Dakota, South Dakota, Maryland and Oregon.

A number of states have provided for some modifications of the general property tax, by provisions for exemptions or for special taxation of certain classes of property: Mortgages have been exempted in Utah, Louisiana, California and North Carolina; double taxation of mortgages and the property mortgaged has been eliminated in Ohio; and a special tax on intangible property has been established in Maine. State income taxes have been authorized in Virginia, Wisconsin, Ohio and Massachusetts; special corporation taxes in Ohio, South Dakota and Louisiana; special methods of taxing mines in Virginia, Nevada and Utah; and special taxes on or exemptions of forest lands in Massachusetts and Ohio. Exemptions have been provided for vessels in California, Louisiana and Oregon; for property of educational institutions in California; and for farm products in the hands of the producer in Georgia.

Active efforts have been made to obtain other and more radical changes in taxation. The separation of state and local taxation has been authorized in Oklahoma and more definitely established in California but has failed in other states. The single tax on land values has been proposed in several states (sometimes in connection with provisions authorizing income, excise and inheritance taxes), but thus far has not been adopted in any state. Single tax proposals were rejected in Colorado (1902), Missouri (1912, 1918), Oregon (1912) and California (1916, 1918). A proposed amendment authorizing local option in taxation was adopted in Oregon in 1910, but was repealed two years later. California in 1912 rejected local option in taxation.

Local government and municipal home rule. The most important development in this field has been with respect to municipal home rule. The greater part of the development toward giving cities power to frame and revise their own charters has taken place since 1900, although constitutional provisions as to this subject existed in Missouri, Washington, California and Minnesota before 1900. To the states just mentioned have been added Colorado (1902, 1912), Oregon (1906, 1910), Oklahoma (1907), Michigan (1908, 1912), Arizona (1911), Nebraska, Ohio, Texas (1912) and Maryland (1915). During the period under review the California home rule provisions have been amended five times and have become so complex and so detailed that frequent additional amendments in the future will be necessary.

Other tendencies in the direction of home rule may be noted. Home rule in the framing of county government was provided for in California in 1911 and in Maryland in 1915. Colorado by constitutional amendment in 1902 not only provides for city home rule but also for county home rule for the city and county of Denver. Oregon in 1910 provided for home rule in matters of taxation but this power was withdrawn in 1912. In California proposed amendments for home rule in taxation and with respect to city-county consolidation were rejected in 1912. Oregon in 1908 rejected a proposal for municipal home rule with respect to police legislation. Another constitutional matter having a close bearing upon local home rule is the Illinois constitutional amendment of 1904 permitting special legislation for Chicago subject to a local referendum.

With reference to the granting of franchises several new constitutions during this period confer additional power upon municipal corporations, but also impose wise restrictions upon the use of such power. Alabama gives its cities absolute control over the use of their streets for public utilities or private enterprises, but forbids any town or city having more than six thousand inhabitants to grant a franchise for a longer term than thirty years. The Virginia constitution contains similar provisions, but requires in addition that municipal franchises be sold only after proper public advertisement, and that an ordinance for such a purpose be passed by an affirmative vote

of three-fourths of all members elected to the city council. Oklahoma and Arizona permit their cities to engage in the business of supplying public utilities, limit franchises to a term of twenty-five years, and provide that they shall not be granted, extended, or renewed without the approval of the qualified electors. Michigan permits its cities and villages to acquire, own, and operate their public utilities, but cities and villages are forbidden to grant any franchise not revocable at will or to acquire any public utility unless such action is first approved by an affirmative vote of three-fifths of the electors of such city or village; franchises may not be granted for a longer term than twenty years. Ohio (1912) confers similar powers upon cities. Colorado by an amendment of 1902 forbids a city to grant franchises except by a vote of its taxpaying electors.

Michigan in 1908 adopted a provision that: "When a city or village is authorized to acquire or operate any public utility, it may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law: Provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such city or village, but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure." The same plan has been adopted in Ohio (1912), and New York constitutional amendments accomplish much the same purpose.

A number of other states authorize loans, beyond the ordinary debt limit for public improvements and for waterworks and other utilities. Among these may be mentioned Virginia (1902), South Dakota (1902) and Texas (1904).

With respect to county government, little has yet been accomplished, aside from the county home rule provisions referred to above. A proposed constitutional amendment to be submitted in New York in 1919 seeks to give to the legislature a wider power with respect to the organization of both city and county government. Ohio in 1913 rejected a proposed constitutional amendment reducing the number of elective county offices.

To some extent there has been a slight reduction in the number of county and local officers by legislation or otherwise. The legislation in Illinois abolishing the office of township collector and providing for but one road officer in each township or district indicates a tendency in this direction within this state, but as yet substantially little has been accomplished throughout the country toward the simplification of the very complex organization of local government or toward the reduction of numerous overlapping and conflicting local areas.

During the period under review there has been a rather distinct tendency toward the relaxing of debt limits for cities and counties and this tendency has been particularly apparent with respect to undertakings of a revenue producing character.

Miscellaneous Matters. With respect to labor a large number of constitutional changes have been introduced into constitutions since 1900. Perhaps the most important of these changes are those which relate to (1) hours of employment on public work, (2) workmen's compensation, and (3) the minimum wage. To some extent constitutional provisions in this field have been forced by judicial decisions adverse to state legislation, but the bulk of labor provisions in state constitutions are primarily statutory in character and relate to matters which might have been completely left to legislative action. The bulk of these provisions may perhaps be said to be directory in character; that is, provisions which merely say that the legislature shall have power to do certain things or shall do certain things.

A new field of possible constitutional provisions with respect to labor is that concerning health insurance. The people of California in 1918 rejected a constitutional provision expressly authorizing health insurance.

There have been a number of constitutional changes in recent years extending the uses of the power of eminent domain, either expressly authorizing excess condemnation, or with respect to specific uses of eminent domain, such as lumber roads and the conservation of natural resources.

Somewhat analogous to these constitutional provisions are amendments rejected in Ohio (1912) and adopted in Massachusetts (1918) expressly conferring power upon the legislatures to regulate advertising upon public roads, highways, etc.

The new constitutions of Alabama, Virginia, Oklahoma, Michigan, Arizona and New Mexico require that corporations be organized under general laws. Each of these six constitutions contains rather full provisions regarding corporations, more especially with reference to public service corporations. Oklahoma has gone further than any other state in the regulation of corporations by constitutional enactment, and has embodied in its constitution an elaborate code of corporation law relating more particularly to public service corporations. Alabama authorizes its legislature to fix railroad rates. Michigan, whose former constitution granted the legislature power to fix railroad rates, in 1908 extended this power to express rates also, and permits the creation of a commission to regulate railway and express rates. Virginia transferred control over private corporations and over rates of public service corporations to a state corporation commission. Oklahoma, Arizona and New Mexico have also, by their constitutions, established corporation commissions. Nebraska in 1906, by a constitutional amendment, created a railroad commission with power to regulate the rates and services of common carriers. Ohio in 1912 adopted a constitutional amendment expressly authorizing the regulation of corporations. California in 1911 created a railroad commission by constitutional amendment, and Nebraska in 1906 established a railway commission in the same manner.

The period since 1900 has been peculiarly prolific of constitutional and statutory provisions with respect to the sale of liquor. A whole series of states have adopted constitutional prohibition, but a review

of state activity in this field is unnecessary now in view of the federal amendment covering this subject.

Civil service is another matter as to which some constitutional development has taken place since 1900, although this development has limited itself to the states of California (1911), Ohio (1912), and Colorado (1918).

Summary. The statement here merely attempts to sum up the chief lines of constitutional development since 1900. With a number of new constitutions and with some 1500 proposed amendments of which more than 900 were adopted, it is impossible to do more in this statement than to indicate the main lines of development. As has already been said, the greater number of constitutional changes have related to matters of detail, which could not be brought within any statement of general or broad developments. It seems desirable here to repeat the statement that a large proportion of the changes which have taken place by constitutional amendment or revision are relatively less important than changes made in the same states by statute. The use of the compulsory referendum for the enlargement of the bounds of constitutional development has gone so far that if one were speaking of all of the constitutional proposals since 1900, it is necessary to say that the bulk of them were relatively unimportant and were matters which if they had been possible without a popular vote would never have been submitted to the people under any plan by which popular petition could have required such submission.

A matter of general interest at a particular time is likely to be dealt with by constitutional provisions, irrespective of whether there is any specific need of placing it in the constitution. Many new matters dealt with in constitutions are handled by giving directions to the legislatures. That is, the legislatures are directed or authorized to take certain action. Provisions of this character are ordinarily inserted at the instance of advocates of action as to the particular matter, but under them there is no legal method of forcing legislative action. If the provisions relate to matters already within the legislative power, their only effect is to compel the legislature, if it acts, to act within the limits of such provisions. For example, a command to the legislature to enact a particular type of workmen's compensation law will not compel the legislature to enact such legislation, but legally will have the negative effect of preventing the enactment of any other type of workmen's compensation law.

Attention should again be called to the fact that detailed constitutional provisions introduced either by amendment or otherwise necessarily lead to further and frequent changes. The California constitutional provisions for municipal home rule are a striking example of this statement. Michigan in 1914 adopted a constitutional amendment with respect to absent voting, enumerating the classes of voters to be affected, and found it necessary in 1918 to amend the constitution again in order to include a new class of voters. Detailed constitu-

tional provisions tend by amendment to become more detailed as new contingencies arise, if the constitution is easily amendable; if not they prevent progress. A broad constitutional provision does not require frequent change.

Another matter to which attention may be called is the tendency of the people to disapprove proposals for increases of salaries. No matter how low a salary may be and no matter how clear may be the need for increase, this statement applies equally as if the proposals were ones for extravagant or unreasonable increases. Voters are particularly apt to reject proposals for the increase of salaries of members of legislative bodies.

Another tendency which may be noted (and which applies to increase of salary as well as to other matters) is that the voters are apt finally to approve a proposed amendment if it is submitted a sufficient number of times. Persistence in submitting a proposal at each biennial election is apt finally to be rewarded by success.

APPENDIX.

ACT CALLING CONSTITUTIONAL CONVENTION.

AN ACT to assemble a convention to revise, alter or amend the Constitution of the State of Illinois.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That at the hour of 12 o'clock noon, on the sixth day of January, 1920, a convention to revise, alter or amend the Constitution of the State of Illinois shall meet in the hall of the Representatives of the General Assembly in the capitol building, in the City of Springfield. The Secretary of State shall take such steps as may be necessary to prepare the hall of the Representatives for the meeting of the convention.

§ 2. The convention shall consist of one hundred and two delegates. Two delegates shall be elected in and from each district entitled by law to elect a senator to the General Assembly. Delegates shall possess the same qualifications as State senators. The Governor, or the person exercising the powers of Governor, shall issue writs of election to fill vacancies in the convention.

§ 3. A primary election for the nomination of candidates for the position of delegate shall be held on the tenth day of September, 1919. All provisions of law in force at such time, and applying to the nomination of candidates for the office of State senator, shall to the extent that they are not in conflict with the terms of this Act, apply to the primary election herein provided for.

Vacancies created by the death of, or the declination of the nomination by any person nominated as a candidate for the position of a delegate, shall be filled in the manner provided by law for the filling of similar vacancies occasioned by the death of, or declination of the nomination by any person nominated as a candidate for the office of State senator.

Independent nominations for the position of delegate may be made in the manner now provided by law for the nomination of independent candidates by petition.

§ 4. The delegates shall be chosen at an election to be held on the fourth day of November, 1919. Such election shall be conducted in conformity with the laws then in force relating to elections for State senators, to the extent that such laws are applicable.

All votes cast in the election for delegates shall be tabulated, returned and canvassed in the manner then provided by law for the tabulation, return and canvass of votes cast in elections for State senators.

The official or officials, charged with the duty of issuing certificates of election to persons elected to the office of State senator, shall issue certificates of election to all persons duly elected as delegates.

Election contests for membership in the convention shall be heard and determined by the convention.

§ 5. Each delegate before entering upon his duties as a member of the convention, shall take an oath to support the Constitutions of the United States and of the State of Illinois, and to discharge faithfully his duties as a member of the convention. In going to and returning from the convention and during the sessions thereof the delegates shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest; and they shall not be questioned in any other place for any speech or debate in the convention.

§ 6. Each delegate shall receive for his services the sum of two thousand dollars, payable at any time after the convention is organized. The delegates shall be entitled to the same mileage as is paid to the members of the General Assembly, to be computed by the Auditor of Public Accounts. The delegates shall receive no other allowance or emoluments whatever, except the sum of fifty dollars to each delegate, which shall be in full for postage, stationery, newspapers, and all other incidental expenses and perquisites. The pay and mileage allowed to each delegate shall be certified to by the president of the convention and entered on the journal of the convention.

§ 7. The convention shall determine the rules of its procedure, shall be the judge of the election, returns, and qualifications of its members, and shall keep a journal of its proceedings.

The Governor shall call the convention to order at its opening session and shall preside over it until a temporary or permanent presiding officer shall have been chosen by the delegates.

The delegates shall elect one of their own number as president of the convention, and they shall have power to appoint a secretary and such employes as may be deemed necessary. The secretary shall receive a compensation of fifteen dollars (\$15.00) per day. The employes of the convention shall receive such compensation as shall be determined upon by the convention.

§ 8. The proceedings of the convention shall be filed in the office of the Secretary of State. The revision or alteration of, or the amendments to the Constitution, agreed to and adopted by the convention, shall be recorded in the office of the Secretary of State.

The revision or alteration of, or the amendments to the Constitution, adopted by the convention, shall be submitted to the electors of this State for ratification or rejection, at an election appointed by the convention for that purpose, not less than two months, nor more than six months after the adjournment of the convention. The convention shall determine the manner in which such revision, alteration or amendment shall be submitted to the electors. The convention shall prescribe the manner and form in which such revision, alteration or amendments shall be published prior to the submission thereof to the electors. No such revision, alteration or amendments shall take effect unless approved by a majority of the electors voting at such election.

The convention shall designate or fix the day or days upon which such revision, alteration or amendments, if adopted by the voters, shall become effective.

§ 9. Notices of the election to be called by the convention shall be given in the manner and form prescribed by the convention. The convention shall prescribe the manner and form of voting at such election, and the ballots for use in such election shall be printed accordingly, by the officials charged with the duty of printing ballots for use in general elections.

The votes cast at such election shall be tabulated, returned and canvassed in such manner as may be directed by the convention.

§ 10. Every person who, at the time of the holding of any primary or other election provided for in this Act, is a qualified elector under the Constitution and laws of this State, shall be entitled to vote in such election.

The primary and other elections provided for in this Act shall be held at the places fixed by law for the holding of general elections and shall be conducted by the officials, judges and clerks charged with the duty of conducting general elections.

All laws then in force in relation to the registration of voters in primary and general elections, and all laws then in force for the prevention of fraudulent and illegal voting, shall be applicable to the primary and other elections provided for in this Act.

All laws in force governing elections and not inconsistent with the provisions of this Act, or with powers exercised under the terms hereof, shall apply to and govern elections held under the terms of this Act.

§ 11. The convention shall have power to punish by imprisonment, any person, not a member, who shall be guilty of disrespect to the convention, by disorderly or contemptuous behavior in its presence. But no such imprisonment shall extend beyond twenty-four hours at any one time, unless such person shall persist in such disorderly or contemptuous behavior. Commitments for disorderly or contemptuous behavior in the presence of the convention shall be made in the manner now provided by law for the commitment of persons guilty of disrespect to the General Assembly.

§ 12. It shall be the duty of all public officers to furnish the convention with any and all statements, papers, books, records and public documents that the convention shall require. The convention, and its committees, shall have the same power to compel the attendance of witnesses, or the production of papers, books, records and public documents, as is now exercised by the General Assembly, and its committees, under the provisions of an Act entitled, "An Act to revise the law in relation to the General Assembly," approved and in force February 25, 1874.

§ 13. The sum of five hundred thousand dollars (\$500,000), or so much thereof as may be necessary, is hereby appropriated for the payment of salaries and other expenses properly incident to the constitutional convention. The Auditor of Public Accounts is hereby authorized and directed to draw warrants on the State Treasurer

for the foregoing amount or any part thereof, upon the presentation of itemized vouchers certified to as correct by the president of the constitutional convention or the acting president of the convention. All printing, binding, stationery and other similar supplies for the constitutional convention shall be furnished through the Department of Public Works and Buildings.

Approved June 21, 1919.

CONSTITUTIONAL CONVENTION

BULLETIN No. 2

The Initiative, Referendum and Recall



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LEGISLATIVE REFERENCE BUREAU.

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constitutional convention.*

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I. SUMMARY.

This pamphlet deals with the initiative and referendum, with the recall of judicial decisions and the recall of public officers. The recall of public officers is an institution quite distinct in purpose from the initiative and the referendum, but the recall has normally been discussed in connection with the initiative and referendum, and it may properly be treated here, because it involves the same problems of petition and popular vote that are involved in the initiative and referendum. The recall of judicial decisions is really another application of the referendum, and is properly dealt with in connection with the initiative and the referendum.

The recall of public officers is of course another means of removing such officers, and bears a close relation to the problems of local government, and also to the problems of the executive department.

The initiative and referendum in most states are applied to local as well as to state issues, and in some states they are applied by statute to local matters while not applicable to state issues. However, this pamphlet deals with them primarily with respect to state issues, although a larger part of what is said about them with respect to state issues may be also properly applied to their use for local purposes.

The discussion of the initiative and referendum contained in this pamphlet is based upon a large mass of material which can not be given in the pamphlet itself. A complete table has been prepared of all measures submitted to a popular vote in the states under the initiative and referendum, and this manuscript table will be available for use by members of the convention who desire to analyze the votes for themselves. A manuscript summary has also been made of all statutes carrying into effect the initiative and referendum, and abstracts have been made of all cases involving the initiative and referendum provisions of the several constitutions.

The problems dealt with in this pamphlet bear a close relation to those discussed in a succeeding pamphlet on constitutional amendment and revision, and some further discussion of the popular initiative as applied to constitutional amendments will be found in that pamphlet.

Public policy questions upon the adoption of state-wide or local initiative and referendum have been submitted to the voters of Illinois in 1902, 1904 and 1910, and two questions upon the initiative and referendum are to be submitted at the election of November 4, 1919. The state-wide questions submitted in 1902

1910 are substantially identical. Upon the questions submitted at elections, the initiative and referendum have in each case received a majority of the votes cast upon the question, although this has in no case constituted a majority of the votes cast in the election. The votes upon these measures will be found upon page 71 of this pamphlet.

This pamphlet limits itself to an analysis of initiative and referendum provisions, and to statements regarding the general operation of these institutions, without entering into the controversial field with respect to their application in particular cases. For example, the use of the referendum to hold up appropriations for the University of Oregon has been referred to (p. 91) only to indicate its influence in causing other states to exempt such appropriations from the referendum; frauds in the preparation of petitions have been referred to (p. 96) only in so far as they have led to legal enactments seeking to prevent such frauds; misleading ballot titles have been referred to (p. 97) only in connection with efforts to prevent abuse in this respect; the use of the referendum merely for the purpose of delaying the coming into effect of an act has been commented upon (pp. 90, 113-114) only so far as it bears upon efforts to remedy this abuse. The submission and adoption of conflicting measures (pp. 86-88, 112) has been dealt with only in its bearing upon the machinery of popular voting. Information is being collected upon the specific cases in which the use of the initiative and referendum has been more particularly subject to criticism, and much of the popular discussion of these institutions has centered about such cases; but discussion of these cases of abuse or alleged abuse involves facts which are in many cases capable of being interpreted either way, according to the point of view of the individual, and such discussion is out of place in a pamphlet seeking to make an impartial analysis of the institutions.

II. DEFINITIONS AND TYPES.

The Initiative: The initiative is a means of popular proposal of legislation. It is true, of course, that any person may under present conditions, obtain the introduction of a measure into a state legislature, but the popular initiative contemplates not merely the introduction of a measure, but also the necessity that that measure be considered by the legislature, or be voted upon directly by the people. The direct initiative is an initiative which proposes a matter, and forces a popular vote upon it without an opportunity for action by the representative legislative body. The indirect initiative on the other hand contemplates that the regular legislative body should first have an opportunity to act before a popular vote is to be taken upon the measure initiated by popular action.

An illustration of indirect initiative may be found in the Commission Government Act of the State of Illinois.¹

By this section of the Illinois statutes any proposed ordinance may be submitted to the council by a petition of the electors of the city or village. If the petition is signed by electors equal to 25 per cent of the votes cast for all candidates for mayor at the last preceding general election and contains a request that the ordinance be submitted to the people if not passed by the council, the council must either pass the ordinance within 30 days or call a special election unless a general election is to take place at which the ordinance may be submitted within 90 days thereafter. If the petition is signed by not less than 10 per cent of the electors the council must either pass the ordinance without change or submit it at the next general election. Another case of indirect initiative is that provided for by Article X, Section 3 of the constitution of Illinois, under which it is provided that no territory shall be stricken from any county "unless a majority of the voters living in such territory shall petition for such division." Probably the only case of direct initiative now existing in Illinois is that under the public policy law by which a proposal is directly initiated by popular petition to be voted upon at an election, although the vote constitutes merely an advisory vote and has no binding force.

Referendum: By the referendum is meant the possibility or the necessity of a popular vote upon a measure before such a measure becomes finally effective. The term compulsory referendum is applied to the case in which a measure must have popular

¹ Hurd's Revised Statutes, Ch. 24, Sec. 193 b 47.

approval before coming into operation. The term optional referendum is applied to the case in which a popular vote may be required but is not essential to a measure's coming into effect. There are numerous cases of both the compulsory and the optional referendum in Illinois.

Under the constitution of 1870 there are a number of cases of compulsory referendum. By Article XIV of the constitution no constitutional amendment nor other constitutional change may come into effect without a popular vote, and no constitutional convention may be held for the recommendation of alterations to the constitution without such a popular vote. By this constitution also all banking legislation must be submitted to a popular vote before it becomes effective (Article XI, Section 5), the increasing of the state debt beyond a very small amount must be submitted to a popular vote, (Article IV, Section 18), and a popular vote is required for the sale of the Illinois and Michigan canal or of other canals or waterways owned by the state. The constitution also requires that certain acts relating to the city of Chicago be submitted to a popular vote before becoming operative (Article IV, Section 34), and there are other requirements of local referenda with respect to county debts, county seats, township organization, etc. In all of these cases the act to be done requires a popular vote, and cannot be done without a favorable popular vote.

Examples of the optional referendum may be found in numerous cases in the present Illinois statutes, for a large amount of legislation with respect to local affairs since 1870 has been what is termed local option legislation, that is, legislation which may come into effect in particular communities upon the vote of those communities. In the cases here referred to the vote is optional, it depending upon the community itself as to whether it shall or shall not bring into operation the requirement for such a vote, although if the community desires a particular type of legislation, such legislation can be obtained only by a popular vote, and in this respect the vote is necessary or compulsory. Examples of this may be found with respect to liquor legislation, the adoption of the commission form of government, the city civil service act and the registration of titles under the Torrens system.

The commission government act of Illinois provides for a wider use of what has been termed an optional referendum. The Commission government act provides² that no ordinance passed by the council except in certain cases shall go into effect before 30 days from the time of its final passage. During this 30 days a petition signed by the electors equal to 10 per cent. of the net vote cast for all candidates for mayor at the last preceding general election may suspend such ordinance and require that the council reconsider the ordinance. If the ordinance is not repealed by the council it is required to be submitted at a special election to be called for that purpose or at a general election. The ordinance does not become operative unless a majority of the qualified electors

² Hurd's Revised Statutes, Ch. 24, Sec. 193 b 48.

voting upon it vote in favor thereof. If no petition is filed against any ordinance the ordinance is in full force and effect within 30 days after its final passage.

Relationship between initiative and referendum: The definitions given above indicate the close relationship between the initiative and the referendum. The initiative either directly or indirectly calls for a popular referendum. If the initiative is what is termed a direct initiative the popular petition itself requires a referendum upon the measure proposed. If the initiative is an indirect initiative the petition requires first some legislative action and then some popular vote, or permits a popular vote upon the taking of some further action. The term initiative standing alone therefore means very little with respect to those institutions.

The close relationship between the initiative and the referendum is well illustrated by the Illinois public policy law enacted in 1901. Under this law 10 per cent of the voters of the state may require the placing upon the ballot of a measure to be voted upon by the people of the state at large; and a larger percentage may require votes upon public policy measures in subdivisions of the state. The petition under the public law³ may perhaps be called an initiative, and the popular vote upon such proposed question of public policy is properly termed a referendum, although the whole effect of the two is merely advisory to the legislative body with respect to the measure voted upon, and in this respect the law may be properly termed one for an advisory initiative.

Recall of Judicial Decisions: What is termed a recall of judicial decisions was advocated by Ex-president Roosevelt in 1912 and was incorporated in the constitution of Colorado in that year. Under the recall of judicial decisions, as adopted into the constitution of Colorado, if a measure is declared unconstitutional by the supreme court of that state, a popular petition may require that the law be submitted to a popular vote for adoption or rejection. If a majority of the vote upon such a law is in its favor, the law stands as a valid law independently of the judicial decision. Substantially what this amounts to is a referendum for the purpose of taking the particular law out from under the constitution as construed by the highest state court. In effect it is merely to this extent an amendment of the state constitution.

Recall of public officers: By the recall of public officers is meant a device by which upon a petition the question of continuing a particular officer may be submitted to a popular vote, that officer

³ Hurd's Revised Statutes, Ch. 46, Sec. 428-429.

ceasing to occupy the office upon an adverse popular vote. An illustration of the recall of public officers is to be found in the commission government act of Illinois.⁴

Under this act a petition signed by voters equal to 55 per cent. of the entire vote for candidates for the office of mayor at the last preceding general election may require a popular vote upon the continuance in office of any elective state officer except a judicial officer or officer of a court. Upon such petition an election is held to determine whether the officer sought to be recalled shall remain in office; and also, if the vote is opposed to his remaining in office, to elect a successor.

⁴ Hurd's Revised Statutes, Ch. 24, Secs. 193 b 42 to 193 b 46.

III. INSTITUTIONS IN ILLINOIS.

The statements made in the preceding chapter indicate in a fairly satisfactory manner the extent to which the institutions of the initiative, referendum and recall have been adopted in the State of Illinois. A further discussion is desirable, however, with respect to the operation of these institutions.

Public Policy Law: The public policy act of 1901 was passed for the purpose of permitting a popular expression upon public measures, without, however, such popular expression having any legal effect. Under this act state-wide public policy questions have been submitted in the following cases:

Public Policy Votes.

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
1902 Initiative and referendum	428,469	87,654	516,123	859,975	49.82	60.01
Local initiative and referendum	390,972	83,377	474,349	859,974	45.46	55.15
Direct Election U. S. Senators	451,319	76,975	528,294	859,974	52.48	61.43
1904 Direct primary.....	590,976	78,446	669,422	1,089,458	54.24	61.44
Local veto on local legislation	535,501	95,420	630,921	1,089,458	49.15	57.91
Local control of local taxation.....	476,783	140,896	617,679	1,089,458	43.76	56.69
1910 Initiative and referendum	447,908	128,398	576,306	945,711	47.36	60.51
State civil service..	411,676	121,132	532,808	945,711	43.53	56.29
Corrupt practices act	422,437	122,689	545,126	945,711	44.66	57.64
1912 Tax amendment to constitution	541,189	187,467	728,656	1,183,584	45.72	61.56
Primary law amendments	524,171	158,531	682,702	1,183,584	44.28	57.68
Short Ballot.....	508,780	165,270	674,050	1,183,584	42.90	56.94

It is probable that the votes upon these public policy questions have had little influence upon state legislation, although in several

cases the public policy votes have just preceded legislative action. This is true with respect to the public policy vote in 1904 with respect to primary elections; that of 1910 with respect to the extended state civil service law; and that of 1912 with respect to a tax amendment to the constitution. A proposed tax amendment to the constitution was recommended by the general assembly to the voters in 1915, but failed to receive the constitutional majority of the popular vote. The local advisory referendum has also been used to some extent in this state.

State-wide Referenda: All proposed constitutional amendments have, of course, been submitted to a popular vote and all amendments to banking laws. In 1918 there were three cases of state wide referenda:

- (1) The one upon the holding of a constitutional convention,
- (2) the one upon a \$60,000,000 bond issue for state highways, and
- (3) the one upon amendments to banking legislation.

Since 1870 there have been, in addition to the advisory referenda referred to above, the following state-wide referenda in Illinois in which the popular vote actually determined whether action should or should not be taken:

State-wide Referenda other than Public Policy Votes.¹

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
1877 Additional appropriation for state-house	80,222	204,860	285,082	389,189	20.61	73.25
1878 Drainage amendment	295,960	60,081	356,041	448,796	65.94	79.33
1880 County officers amendment	321,552	103,966	425,518	622,306	51.67	68.37
1882 Additional appropriation for state-house	231,632	163,796	395,428	532,583	43.49	74.24
Cession Illinois & Michigan Canal to U. S.	363,855	59,675	423,530	532,583	68.31	79.52
1884 Additional appropriation for state-house	364,796	.....	.....	673,096	54.03	.....

¹ Constitutional amendments, acts making appropriations for the statehouse and acts disposing of the Illinois and Michigan canal and canal lands, require a majority of the votes cast at the election; acts providing for increases in state debt (such as that with respect to the state-wide system of highways in 1918) require a majority of votes cast for members of the General Assembly; banking legislation requires a majority of the vote thereon.

State-wide Referenda other than Public Policy Votes—Concluded.

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
1884 Amendment — veto of separate items of appropriation bills	427,821	60,244	488,065	673,096	63.56	72.50
1886 Amendment abolishing contract convict labor.....	306,565	169,327	475,892	574,080	53.40	82.89
1888 Act to amend the banking laws....	380,945	130,772	511,717	748,233	50.91	68.39
1890 Amendment authorizing Chicago bond issue for Columbian Exposition	500,299	55,073	555,372	677,817	73.81	81.93
Act to amend banking laws.....	480,512	56,737	537,249	677,817	70.89	79.26
1892 Amendment to amending article.	84,645	93,420	178,065	871,508	9.70	20.43
1894 Amendment to provide for labor legislation	155,393	59,558	214,951	873,426	17.79	24.61
1896 Amendment to article on amendment	163,057	66,519	229,576	1,090,869	14.94	21.04
1898 Act to amend banking laws	124,656	55,773	180,429	878,587	14.18	20.53
1904 Amendment providing for special legislation for Chicago	678,393	94,038	772,431	1,089,458	62.27	70.90
1906 Sale of Illinois and Michigan Canal lands	313,297	282,980	596,277	899,016	34.84	66.32
1908 Amendment to separate section on canal to authorize \$20,000,000 bond issue	692,522	195,177	887,699	1,169,330	59.22	75.91
Act to amend banking law	473,755	108,553	582,308	1,169,330	40.51	49.79
1916 Tax amendment to the constitution..	656,298	295,782	952,080	1,343,381	48.85	70.87
Amendment to the general banking law	421,259	174,494	595,753	1,343,381	31.35	44.35
1918 For constitutional convention	562,012	162,206	724,218	975,545	57.61	74.23
State-wide system of hard roads....	661,815	154,396	816,211	975,545	67.84	83.66
Amendment to the general banking law	403,458	83,704	487,162	975,545	41.35	49.93

Referenda in Chicago:² Within the City of Chicago a great deal of use has been made of local referenda either by the municipal council or under state legislation. This use was for a while particularly active with respect to the problem of street railways. All ordinances authorizing the issuance of bonds must be submitted to a popular vote not only in Chicago, but also in all other cities of the state as well. Reference has already been made to the constitutional amendment of 1904 under which acts of the legislature relating to the government of the city of Chicago must be submitted to the popular referendum before coming into effect. A table is inserted below giving information about popular referenda in Chicago since 1905.

Chicago Referenda, 1906-1919.

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
Apr. 3, 1906 Proposed operation of street railways by the city of Chicago	121,916	110,323	232,239	265,575	.45	.87
Proposed approval of an ordinance making provision for the issue of "Street Railway certificates" not exceeding \$7,500,000.	110,225	106,859	217,084	265,575	.41	.81
Public Policy Question regarding municipal ownership street railways...	111,955	108,087	220,042	265,575	.42	.82
Apr. 2, 1907 Approval of ordinance authorizing operation of street railways and providing for purchase by city.....	167,367	134,281	301,648	340,247	.49	.88
Annexation of village of Morgan Park	171,961	78,063	250,024	340,247	.50	.73
Sept. 11, 1907 Approval of charter and consolidation of local governments	59,786	121,935	181,721	195,654	.30	.92
Consenting to an act to amend the municipal court act	91,628	70,696	162,324	195,654	.46	.82
Nov. 3, 1908 Annexation of the village of Morgan Park	226,647	53,888	280,535	387,337	.58	.72

² For city operation of street railways, a three-fifths affirmative vote is required; for annexations, an affirmative majority of those voting on the question in the city, town or village sought to be annexed, as well as in Chicago; other propositions require an affirmative majority of the votes thereon, in the city of Chicago.

Chicago Referenda, 1906-1919.—Continued.

	Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
Apr. 6, 1909	Levy of tax for public tuberculosis sanitarium	168,716	39,237	207,953	254,045	.66	.81
	Annexation of city of Evanston	132,447	56,171	188,618	254,045	.52	.74
	Annexation of town of Cicero	133,822	52,045	185,867	254,045	.52	.73
Apr. 5, 1910	Annexation of the village of Edison Park	129,852	95,608	225,460	292,363	.44	.77
	Annexation of Oak Park	128,972	92,095	222,067	292,363	.44	.75
	Annexation of the village of Morgan Park	126,745	92,282	219,027	292,363	.43	.74
Nov. 8, 1910	Bonds for constructing a city hall, in sum of \$3,500,000.	139,183	110,787	249,970	331,844	.41	.75
	Annexation of the village of Edison Park	121,378	59,647	181,025	331,844	.36	.54
	Annexation of the village of Morgan Park	121,054	61,034	182,088	331,844	.36	.54
Apr. 4, 1911	\$900,000 bond issue for paying judgments against city	164,919	68,830	233,749	370,352	.44	.63
	\$4,655,000 bond issue for constructing bridges	211,437	65,104	276,541	370,352	.57	.74
	Annexation of Morgan Park	167,588	64,559	232,147	370,352	.45	.62
	Annexation of Cicero	168,026	62,442	230,468	370,352	.45	.62
	Annexation of Oak Park	211,802	82,598	294,400	370,352	.57	.79
Nov. 7, 1911	Consenting to Municipal court Civil Service Act.....	34,592	76,737	111,329	175,302	.19	.63
	Consenting to Municipal court Practice Act	32,045	75,939	107,984	175,302	.18	.61
	Bond issue for construction of bridges, \$4,655,000.	109,673	33,729	143,402	175,302	.62	.81
	Bond issue of \$750,000 for paying judgments against city	91,268	43,626	134,894	175,302	.52	.76
Apr. 2, 1912	City bond issue for acquiring and constructing breakwaters, docks and piers	141,378	99,734	241,112	294,478	.48	.81

Chicago Referenda, 1906-1919.—Continued.

	Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
Apr. 2, 1912	City bond issue for acquiring and improving bathing beaches	119,371	115,674	235,045	294,478	.40	.79
	City bond issue for construction of Contagious Disease Hospital and other buildings for Health Department	132,959	102,306	235,265	294,478	.45	.79
	City bond issue for acquiring and constructing buildings for Police Department	99,733	126,219	225,952	294,478	.33	.76
	City bond issue for acquiring and constructing buildings for Fire Department	108,589	113,516	222,105	294,478	.36	.75
Nov. 3, 1912	City bond issue of \$1,750,000 for improving Twelfth St.	162,264	136,928	299,192	415,863	.39	.71
Apr. 1, 1913	City bond issue for corporate purposes	120,512	115,627	236,139	283,224	.42	.83
	Annexation of Cicero	121,260	50,186	171,446	283,224	.42	.60
Apr. 7, 1914	System of subways	118,010	272,401	390,411	490,294	.24	.79
	Home rule.....	182,335	172,335	354,670	490,294	.37	.72
	City bonds for Fire Department building	132,310	248,655	380,965	490,294	.26	.77
	City bonds for Police Department buildings	109,132	265,382	374,514	490,294	.22	.76
	City bonds for Health Department Buildings...	219,978	160,604	380,582	490,294	.44	.77
	Judgment Funding bonds	91,013	260,251	351,264	490,294	.18	.71
	Bathing Beach bonds	199,015	173,325	372,340	490,294	.40	.75
	Consenting to Municipal court Revision Act	69,145	132,077	201,222	490,294	.14	.41
	Four year term for city officers	112,263	242,172	354,435	490,294	.22	.72
	Annexation of Morgan Park.....	237,567	128,950	366,517	490,294	.48	.74
	Annexation of Cicero	236,863	125,466	362,329	490,294	.48	.73
	Widening and improving North Michigan Avenue.	237,018	154,668	391,686	490,294	.48	.79

Chicago Referenda, 1906-1919.—Continued.

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
Apr. 6, 1915 City bonds for completing the Municipal Contagious Disease Hospital, and for erection of certain buildings in connection therewith, \$500,000....	299,348	157,476	456,824	684,681	.43	.66
City bonds for constructing a dormitory in connection with the House of Correction, \$60,000	259,177	184,679	443,856	684,681	.36	.64
City bonds for constructing a House of Shelter for Women, and constructing buildings for a farm colony for House of Correction, \$250,000..	252,642	186,796	439,438	684,681	.36	.64
City bond issue for construction of Municipal Garbage Reduction Works, \$700,000	262,659	164,462	427,121	684,681	.38	.62
City bond issue for acquiring and improving bathing beaches, playgrounds and Neighborhood Centers, \$600,000....	285,752	160,444	446,196	684,681	.41	.65
City bond issue for Fire Department Buildings, \$663,000	241,869	188,688	430,557	684,681	.35	.62
City bond issue for Police Department Buildings, \$1,199,000	216,161	200,688	416,849	684,681	.31	.61
Annexation of Village of Clearing..	246,036	153,122	399,158	684,681	.35	.58
Annexation of Village of Elmwood Park	233,336	154,644	387,980	684,681	.34	.56
Double Platoon System in Chicago Fire Department..	184,157	281,759	465,916	684,681	.26	.68
Annexation of City of Blue Island....	246,143	153,597	399,740	684,681	.35	.58
Annexation of certain territory in Section 31, Township 41	215,169	164,786	379,955	684,681	.31	.55
June 7, 1915 Completing the 9th and 10th floors of the Courthouse, \$200,000	360	80,350	142,710	200,752	.31	.71

Chicago Referenda, 1913-1919

continued.

	Proposition	Vote for.	Vote against.	Total vote of proposition	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
June 7, 1915	Annexation of part of Stickney	96,135	51,576	147,711	200,752	.47	.73
Apr. 4, 1916	Amendment to Municipal Court Act.	134,340	136,253	270,593	466,394	.28	.58
June 5, 1916	Bridge Construction bonds in sum of \$5,100,000.....	94,606	58,038	152,644	179,169	.52	.85
	Bond issue for extension of street lighting system, \$3,750,000	86,795	65,908	152,703	179,169	.48	.85
Nov. 7, 1916	Bond issue for municipal garbage reduction plant, etc.	201,675	297,876	499,551	776,754	.25	.64
	Bond issue for Municipal Bathing Beaches, Playgrounds, etc	269,339	294,177	563,516	776,754	.34	.72
	Consolidation of local governments within city of Chicago	194,792	311,186	505,978	776,754	.25	.65
Apr. 3, 1917	City bonds for providing lake shore protection improvements, etc. new bathing beaches at 51st and 79th Streets, \$200,000	147,407	158,872	306,279	425,705	.34	.71
	City bonds for constructing boys school as branch of House of Correction, \$250,000..	161,493	144,764	306,257	425,705	.37	.71
	City bonds for constructing buildings and providing equipment for disposal of waste, \$1,000,000	149,110	147,595	296,705	425,705	.34	.69
	City bonds for public comfort stations, \$150,000....	151,661	149,210	300,871	425,705	.5	.70
	City bonds for Municipal contagious disease hospital, \$750,000	180,819	117,787	298,606	425,705	.42	.70
Nov. 6, 1917	Annexation of Stickney	105,352	75,418	180,770	229,700	.45	.78
	Annexation of a portion of Norwood Park	103,862	72,123	175,985	229,672	.45	.76

Chicago Referenda, 1906-1919—Concluded.

	Proposition	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
Nov. 6, 1917	Consenting to amendment of Municipal Court Act, relating to service of summons, practice and proceedings	67,031	55,436	122,467	229,672	.29	.53
	Amendment to Municipal Court Act.	64,650	54,403	119,053	229 6	.28	.51
Apr. 2, 1918	Annexation of Elmwood Park	136,777	60,077	196,854	397,555	.34	.49
	Annexation of a portion of Norwood Park.....	179,557	87,484	267,041	397,555	.45	.67
Nov. 5, 1918	Approval of City ordinance authorizing the Chicago Local Transportation Company to construct a system of local transportation, and providing for a subway system	209,682	243,334	453,016	502,511	.41	.90
	\$3,000,000 bond issue for paying judgments entered for public benefits and for widening N. Michigan Avenue	286,834	132,680	419,514	502,511	.57	.83
Apr. 1, 1919	Shall city become Anti-Saloon Territory?	147,179	406,190	553,369	698,920	.21	.79
	City bond issue for constructing a viaduct in East and West Twelfth Street, \$1,200,000.	305,307	218,186	523,493	698,920	.43	.74
	City bond issue for payment of judgments against city	243,406	228,916	472,322	698,920	.34	.67

IV. OUTLINE OF DEVELOPMENT OF THE INITIATIVE AND REFERENDUM IN OTHER STATES.

This outline deals primarily with the state-wide initiative and referendum although a large number of the constitutional provisions adopting the initiative and referendum have at the same time either explicitly provided for local initiative and referendum, or have explicitly authorized the legislatures to provide for these institutions.

The referendum is a much older institution in this country than the initiative. Since the first state constitutions there has been a steady tendency to permit constitutional changes only as the result of a popular vote, and Delaware is today the only state whose constitution may be amended without a referendum. There has also been a tendency in constitutional development to specify certain types of legislation as operative only after a popular vote of the state at large. This is illustrated by the constitutional provisions in Illinois that all changes in banking legislation shall come into effect only after a popular vote, and that a popular vote of the state is necessary for the increasing of indebtedness beyond a certain small amount. Under these constitutional provisions a rather active application of the referendum has existed in this country for a number of years. Between 1901 and 1908 about 400 constitutional proposals were submitted in the several states, and for the whole period between 1901 and 1919 more than 1500 such proposals were submitted. These proposals are ones which would have required a popular vote, even before the adoption of the referendum in a number of states for ordinary legislation; although the number of proposed constitutional amendments submitted in the several states has been somewhat augmented by the fact that in an increasing number of states between 1902 and 1919 a popular initiative upon constitutional amendments has been established in addition to the power of the representative legislative bodies to submit such amendments.

South Dakota in 1898 was the first state to adopt the initiative and the referendum. Since that time nineteen other states have adopted the initiative and referendum for state-wide measures, or have provided for the application of the principles of these institutions, and two states (New Mexico and Maryland) have adopted the referendum. Utah in 1900 adopted a constitutional amendment authorizing the legislature to establish the initiative and referendum for ordinary legislation, but no legislation was enacted for this purpose until 1917. Idaho in 1912 adopted a constitutional amendment authorizing the legislature of that state to establish the

initiative and referendum, but up to the present time no legislation has been enacted in Idaho. Idaho may, therefore, be excluded from this list, and the number of states having the state-wide initiative and referendum reduced to nineteen. Maryland and New Mexico have only the referendum, the other nineteen states having both the initiative and the referendum for state-wide legislation. Of the nineteen states having the initiative and the referendum, five do not apply the initiative to constitutional amendments.

A table is presented below indicating the development of the state-wide initiative and referendum in this country, with some indication of the character of the initiative and referendum amendments adopted in the states which have amendments dealing with these subjects:

State-wide Initiative and Referendum.

State.	Date.	Initiative for Statutes.	Initiative for Const. Amendments.	Referendum.	Remarks.
South Dakota.	1898.	5% indirect.	None.	5%.	Slightly restrictive amendment rejected 1914.
Utah.	1900 (directory) Law, 1917.	5% indirect. 10% direct (majority of counties)	None.	10%. (majority of counties).	Law enacted in 1917.
Oregon.	1902 Extended 1906.	8% direct.	8% direct.	5%.	Restrictive amendment rejected 1912.
Nevada.	Referendum 1904 F. & R. 1912.	10% indirect.	10% indirect.	10%.	
Montana.	1906.	8% ($\frac{2}{3}$ of counties) direct.	None.	5% ($\frac{2}{3}$ of counties)	
Oklahoma.	1907.	8% direct.	15% direct.	5%.	Initiated measures require majority of votes at election.
Maine.	1908.	12,000 indirect.	None.	10,000.	
Missouri.	1908.	8% ($\frac{2}{3}$ congressional districts) direct.	8% ($\frac{2}{3}$ congressional districts) direct.	5% ($\frac{2}{3}$ congressional districts).	Restrictive amendment rejected 1914.
Michigan.	1908. Extended 1913.	8% indirect.	10% direct.	5%.	Immaterial amendment adopted 1918.
Arkansas.	1910.	8% direct.	8% direct.	5%.	Rejected constitution of 1917 would have restricted.
Colorado.	1910.	8% direct.	8% direct.	5%.	Restrictive amendments rejected 1914.

State-wide Initiative and Referendum—Concluded

State.	Date.	Initiative for Statutes.	Initiative for Const. Amendments.	Referendum.	Remarks.
California.	1911.	8% direct. 5% indirect.	8% direct.	5%.	Restrictive amendment rejected 1915.
New Mexico.	1911.	None.	None.	10% ($\frac{3}{4}$ counties).	25% may suspend law. Majority 40% vote at election to reject.
Arizona.	1911 Extended 1914.	10% direct.	15% direct.	5%.	Restrictive amendment rejected 1916.
Idaho.	1912 directory.	None.	None.	None.	No law yet enacted.
Nebraska.	1912.	10% (5% in $\frac{2}{3}$ counties) direct.	15% (5% in $\frac{2}{3}$ counties) direct	10% (5% in $\frac{2}{3}$ counties).	Affirmative vote of 35%.
Ohio.	1912 Extended to federal amendments, 1918.	3% plus 3% indirect (at least $\frac{1}{2}$ percentage from $\frac{1}{2}$ counties).	10% direct (at least $\frac{1}{2}$ percentage from $\frac{1}{2}$ counties).	6% (at least $\frac{1}{2}$ percentage from $\frac{1}{2}$ counties).	Restrictive amendment rejected 1915.
Washington.	1912.	10% (not over 50,000) direct and indirect.	None.	6% (not over 30,000).	Total vote must equal $\frac{1}{3}$ at election.
Mississippi.	1914.	7,500 direct.	7,500 direct.	6,000.	Proposal submitted and failed 1912.
North Dakota.	1914 Revised and extended 1918.	10,000 direct.	20,000 direct.	7,000.	30,000 may require special election on emergency referred law.
Maryland.	1915.	None.	None.	10,000 (Not more than $\frac{1}{2}$ from one county or Baltimore.)	Referendum only.
Massachusetts.	1918.	10 plus 20,000 plus 5,000. 30% vote. Indirect.	10 plus 25,000. Two sessions. 30% vote. Indirect.	10 plus 15,000. 10 plus 10,000 for repeal of emergency or other measures. 30% vote.	Expressly inapplicable to numerous subjects. Not over $\frac{1}{4}$ signatures from one county.

In all of the states except Utah and Idaho, and perhaps South Dakota, the constitutional amendments with respect to the initiative and the referendum have been self-executing, but have provided that legislation should or might be enacted to carry them into operation. The amendments adopted have in some cases been general in form and have left a large amount of detail to be covered

by statutes. Others have dealt with matters in detail themselves and have left a less amount of detail to statutory regulation. However, in all but two or three of these states, legislation has been enacted supplementing the constitutional provisions, and it is necessary in many cases to have this legislation in mind in discussing the operation of the constitutional provisions.

In addition to the establishment of the initiative and referendum by constitutional provisions, these provisions themselves have in a number of cases expressly authorized the establishment of the local initiative and referendum, or have themselves established such institutions. In states not having constitutional provisions, there have been a number of statutory provisions adopted for the local initiative and referendum, most frequently in connection with commission government legislation for cities.

V. DETAILED ANALYSIS OF THE INITIATIVE AND REFERENDUM.

This analysis deals primarily with the constitutional provisions of the twenty-two states which have such provisions, and primarily also with the state-wide initiative and referendum for these states, although statutory provisions are discussed where they are important, and some reference is made to judicial decisions throwing light upon the interpretation of the constitutional provisions.

Types of the Initiative: Of the nineteen states having a popular initiative in operation ten have a direct initiative.¹

That is, in ten of the states a measure is proposed by popular petition, and then goes directly to a vote of the people as a result of such proposal.

Nine states have some form of what may be termed an indirect initiative, although these states must be divided into several classes:

(a) South Dakota adopted the first constitutional amendment in this country for the initiative and referendum, and under the South Dakota amendment a popular petition proposes a measure which the "legislature shall enact and submit." The only function of the legislature in the South Dakota indirect initiative is that of adopting the proposal of the people and of submitting it in the form in which it was proposed. The function of the legislature is mandatory (although there is of course no judicial means of enforcing its performance), and the legislative act of adoption is a matter of pure surplusage which has no bearing in any way upon the actual operation of the initiative.

(b) Maine (1908), Nevada (1912), and Michigan (1913) have an indirect initiative under which measures proposed by petition (but not constitutional amendments in Michigan) must be submitted to the legislature. However, in these three states the legislative function is that of accepting or rejecting without change the measure as it is proposed, although in these states the legislature has authority to submit competing or substitute proposals with the recommendation that such proposals be adopted by the voters.

(c) In three states a choice is given of either direct or indirect initiative. In Washington (1912) a measure initiated by petition goes to the legislature if the petition is submitted not less than ten days before the legislative session. If the petition is submitted not less than four months before an election, the measure goes directly to the popular vote at the election. Under the 1917 statute of Utah a 5 per

¹ Oregon, Montana, Oklahoma, Missouri, Arkansas, Colorado, Arizona, Nebraska, Mississippi, North Dakota.

cent petition may initiate a proposed measure in the legislature, but a 10 per cent petition is required to initiate a measure for submission directly to popular vote. Under the Utah legislation if a measure initiated in the legislature by a 5 per cent petition is not enacted without change by the legislature, a further 5 per cent petition is necessary to require submission to a popular vote. In California (1911) a measure may be initiated directly to the voters by an 8 per cent petition. A measure may be initiated in the legislature by a 5 per cent petition. If a measure is initiated in the legislature by a 5 per cent petition it must be passed or rejected as presented; and if rejected it goes to a popular vote, with power in the legislature to submit a competing or substitute proposal, as in the states of Maine, Nevada and Michigan, commented upon above.

(d) Ohio (1912) provides for an indirect initiative with respect to laws, and Massachusetts (1918) provides for an indirect initiative both as to laws and constitutional amendments. Under the Ohio constitutional amendment of 1912 a 3 per cent petition may present the text of a measure to the legislature. If the measure is not passed, or is passed in an amended form or no action is taken within four months, an additional 3 per cent petition may require the submission of the measure either in its original form or with amendments proposed by either or both houses. The Massachusetts constitutional amendment of 1918 for the indirect initiation of both laws and constitutional amendments is the most complex initiative and referendum provision yet adopted by any state. The Massachusetts amendment contains a number of limitations upon the use of the initiative. Ten petitioners first present a proposed measure to the Attorney General who makes a certification (if he so finds) that the proposal is not in contravention of any of the limitations upon the use of the initiative. A petition of 20,000 voters may then present the measure to the general court. A majority of the first ten petitioners may make corrections in the proposed law subject to the approval of the Attorney General and then an additional petition of 5,000 voters may require the submission of the measure to a popular vote. The steps upon an initiated constitutional amendment are still more complex.

(e) Wisconsin and Illinois proposals: A proposed constitutional amendment rejected in Wisconsin in 1914 and a proposed amendment presented to the Illinois General Assembly in 1911 and 1913, but not submitted to the people, contain certain points of importance in connection with the possible use of the indirect initiative. Under the Wisconsin plan it is assumed that if any appreciable number of the people of the state wish to do so they may obtain the introduction of a measure in the legislature. The measure being introduced in the legislature in the ordinary way, without the pressure of an initiative petition, a petition of 8 per cent of the qualified voters may then require the submission to the people of such a proposed law, either in the form in which it was originally introduced or with any amendments thereto which may have been proposed in the legislature.

Under the proposed Illinois plan, an 8 per cent popular petition might initiate a matter in the legislature, and unless the measure

so initiated were enacted without change, it was to be submitted to the people at the next general election, unless it should be placed upon passage and fail to receive the affirmative vote of at least one-fourth of the members elected to each house.

A possible combination of the Wisconsin and Illinois plans might proceed upon the assumption that any desired measure can be introduced into the legislature under the present legislative machinery, and this assumption is probably a correct one. The measure once introduced, a popular petition could then require the submission of the measure together with any amendments made in either or both houses of the legislature, provided the measure received the affirmative vote of at least one-fourth of the members elected to each house.

Draftsmanship: The indirect initiative has been adopted primarily for the purpose of obtaining or seeking to obtain a more thorough consideration of a measure before it is submitted to a popular vote. The indirect initiative in Ohio and Massachusetts actually provides for the amendment of the measure after it has been once submitted by petition, and a similar result would be obtained by the Wisconsin plan, or by the combination of the Wisconsin-Illinois plans, referred to above.

Statutes in two states seek to provide for something of drafting advice. In Ohio two or more qualified electors may submit a proposed law or constitutional amendment to the Legislative Reference Department for examination, and that department is required to certify as to the correctness of the form of the proposed measure. In Washington the Attorney General is required when requested by any voters to advise as to the form and phraseology of an initiative or referendum petition.

Conflicting or Competing Measures: The discussion above of the different types of the initiative indicates the possibility of competing or conflicting measures. Competing measures are expressly authorized in the states which provide that a measure shall be submitted to the legislature and enacted or rejected without change, but that the legislature may submit competing or substitute measures, (Maine, Nevada, Michigan). The provisions for indirect initiative in Washington also expressly contemplate competing measures. Massachusetts also has provisions as to competing and conflicting measures. Possibilities of conflict are expressly recognized by the constitutional provisions of Nevada, California, Arizona, Nebraska, Ohio and North Dakota, and by statutory provisions in Oregon, Oklahoma, Arkansas and Colorado.

In Washington it is expressly provided by the constitution that in the case of two expressly competing measures "when conflicting measures are submitted to the people the ballot shall be so printed

that a voter can express separately by making one cross (X) for each two preferences, first as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law." In Oklahoma provision is made by statute that if competing measures are submitted and neither has a favorable vote, one shall be resubmitted if it receives one-third of the vote. In case of conflict the highest vote controls. Maine in expressly providing for competing measures requires that they be submitted in such manner that either may be chosen or both rejected. If both are rejected, but one receives more than one-third of the votes for and against both, it is to be submitted again. The Massachusetts constitutional amendment of 1918 provides "for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election; provided that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved."

As indicated above, there are a number of states in which there may be expressly competing proposals, that is, proposals only one of which is intended to be adopted. In this case, of course, the voter has merely the question of choice as between two measures, and the ballot should be so arranged (although provision is not always so made) for the voting upon the two measures in the alternative. Some of the states in which alternative measures may be submitted merely provide as does Michigan that the measure receiving the highest affirmative vote shall prevail.

The question of conflict among measures voted upon by the people is not merely one, however, of a possible conflict between measures which are in form alternative measures. In states which have no provisions for possible alternative proposals, proposals may be submitted which are actually alternative. This was the case of the Oregon proposals with respect to fisheries in 1908, the adoption of both of which actually prevented any fishing at all in the matter sought to be legislated upon through laws submitted by popular initiative. It may often be, also, that measures are submitted upon the same matter which actually conflict with each other, either in whole or in part, and it is to meet this situation that legislation has been enacted in Oregon providing that to the extent of such conflict the measure obtaining the highest vote shall control. Similar legis-

lation has been enacted in Oklahoma, Arkansas and Colorado, and provisions of much the same character exist in California, Arizona, Nebraska, Ohio, North Dakota, Massachusetts and Mississippi. Utah has a statutory provision that in case of conflict, the governor shall proclaim the measure receiving the greatest number of votes, but provides an appeal to the Supreme Court as to whether there is a conflict.

An interesting illustration of the possibility of conflict in measures independently submitted was that with respect to two constitutional amendments in Ohio in 1918. A proposed initiative amendment provided for the classification of property for taxation, and a proposed legislative amendment for the narrower matter of avoiding double taxation on real estate. The legislative amendment, having received the larger affirmative vote, destroyed the broader initiative amendment which necessarily dealt with the same section of the constitution.

Emergency Measures under the Referendum: The referendum is in substantially all of the states applicable to any item, section or part of any act as well as to complete acts, and this complicates to some extent the possibility of popular action upon measures, although there is likely to be little attempt to use the referendum merely upon parts of measures other than appropriation measures; and if the referendum is made applicable to appropriation measures, particular items are ordinarily separable from the remainder of the act.

The general plan for the application of the referendum is that of providing that laws enacted by the legislature shall not come into effect until a certain time after the legislative adjournment. In this interval referendum petitions may be filed, and the effect of such petition is in most states to suspend the act until a popular vote is had. The most difficult problem with respect to the application of the referendum has been that regarding measures for which there is some necessity of obtaining immediate application, without the possibility of suspending the legislation and waiting for the possible filing of a referendum petition and a popular vote. So-called emergency measures have constituted one of the most serious problems in the framing of referendum provisions of constitutions. The South Dakota constitutional provision which came first in this country merely provided that the referendum should not apply to "such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government, and its existing public institutions." In a number of states this rather simple form has been followed with respect to measures which might be regraded as immediately necessary. Oregon in 1902 provided that the referendum might be employed for all laws "except as to laws necessary for the immediate preservation of the public peace, health or safety" but thought it desirable in 1912 to add a provision that "the legislative assembly shall not declare

an emergency in any act regulating taxation or exemption." Montana exempts laws "necessary for the immediate preservation of the public peace, health or safety," but provides that laws shall remain in force until after they are voted upon by the people unless 15 per cent of the voters sign the petition, whereas 5 per cent is sufficient for the ordinary referendum. Missouri, in 1908, exempts from the referendum laws necessary for the immediate preservation of the public peace, health or safety, and also laws making appropriations for current expenses of state government, for the maintenance of state institutions and for the support of public schools; and similar provisions may be found in Michigan, Colorado and Washington. Arkansas (1912) merely excepts from the referendum laws necessary for the immediate public peace, health or safety. There has been, however, a definite tendency to tighten the restrictions upon the legislature with respect to emergency measures which may become effective without the possibility of a popular vote. In Oklahoma, Maine, California, Mississippi and Maryland the constitutional provisions enumerate types of measures which may not be made emergency measures and so taken out from under the control of the initiative and referendum. The Oklahoma provision is that an emergency measure "shall not include the granting of franchises or licenses to a corporation or individual, to extend longer than one year, nor provision for the purchase or sale of real estate, nor the renting or encumbrance of real property for a longer term than one year." North Dakota in 1918 adopted a somewhat similar limitation. In Maine the constitution provides that emergency measures shall not include an infringement of the right of home rule for municipalities, a franchise or a license to a corporation or an individual to extend longer than one year, or provision for the sale or purchase or renting for more than five years of real estate. Matters of special privilege and relating to the creation or abolition of offices may not be emergency measures exempt from referendum in California, Mississippi and Maryland.

To limitations upon the types of measures with respect to which emergencies may be declared, there has been a tendency to add provisions requiring special majorities in the legislature for the declaration of such emergencies. In some cases the emergencies are merely to be declared by separate vote, but in others an exceptional legislative majority is required. For example, Maine requires a two-thirds vote; Maryland a three-fifths vote; Mississippi a three-fourths vote; Utah by statute a two-thirds vote; Ohio a two-thirds vote; Arizona a two-thirds vote with the Governor's approval, or a three-fourths vote in case he disapproves. Oklahoma requires a two-thirds vote of all the members elected to each house, and if the emergency measure is vetoed, a three-fourths vote for passage over such veto. Massachusetts in 1918 adopted rather elaborate provisions limiting emergency laws. The law must contain a preamble setting forth the facts constituting the emergency and that the law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote is required upon such preamble, with approval by

two-thirds of the members of each house voting thereon. However, an emergency measure may also be created by the governor's filing with the secretary of the commonwealth a declaration that in his opinion the act should take effect forthwith. No grant of any franchise or amendment thereto or renewal or extension thereof for more than one year may be declared an emergency measure either by the governor or by the general court.

In the application of the referendum there seems some tendency to apply the principle that a law shall not be suspended by a referendum petition but shall remain in effect until voted upon by the people, an adverse popular action serving then as a repeal. Under the Nevada constitutional provision of 1905, apparently every measure remains in force until it is voted upon by the people, and then is repealed by an adverse vote. The Montana constitutional amendment of 1906 does not suspend a law on the basis of a referendum petition unless the petition is signed by 15 per cent of the voters, 5 per cent being sufficient to demand a referendum. The New Mexico constitution provides for the repeal of a law by popular vote upon a 10 per cent petition, with a 25 per cent petition to suspend the law if this is desired until the vote takes place. The North Dakota constitutional amendment of 1918 requires a two-thirds vote for passing emergency laws, and provides that either the governor or 30,000 petitioners may require a special election upon such laws. Massachusetts provides for the repeal of an emergency or other law on referendum petition.

To permit all laws to come into effect as the result of legislative action would, of course, avoid the suspension of such laws by virtue of a referendum petition and at the same time avoid the necessity of distinguishing between emergency and other laws. An adverse popular vote could then serve to repeal the law, irrespective of its emergency character. The use of the referendum to repeal emergency laws is now provided for by Nebraska, Mississippi, North Dakota and Massachusetts.

The constitutional provisions that emergency measures shall go into immediate effect and not be subject to a referendum necessarily commit to the legislatures in the first place the determination of what constitute emergency measures, whether that determination is required to be by an extraordinary legislative vote or not. The determination by the legislature that an emergency exists has been held to conclude the matter by the courts of Oregon,² Arkansas,³ Colorado⁴ and Oklahoma,⁵ although the Oklahoma court does not permit the legislature to make an emergency measure of measures explicitly declared by the constitution not to be emergency measures. Under similar conditions, however, the courts of Michigan,⁶ South Dakota,⁷ Ohio,⁸ and Cali-

² Kadderly v. Portland, 44 Ore. 118 (1913).

³ Hanson v. Hodges, 109 Ark. 479 (1913).

⁴ Van Cleeck v. Ramer, 62 Colo. 4 (1916).

⁵ In re Menefee, 22 Okla. 365 (1908); Riley v. Carrico, 27 Okla. 33 (1910).

⁶ Attorney General *ex rel* Barbour v. Lindsay, 178 Mich. 524 (1914).

⁷ State *ex rel* Richards v. Whisman, 36 S. D. 260 (1915), overruling State *ex rel* Lavin v. Bacon, 14 S. D. 394 (1901).

⁸ Miami County v. Dayton, 92 Ohio State 215

ifornia,⁹ take the view that the question of the emergency is one for judicial review, and in several of these states the courts have held the referendum applicable to laws in the face of legislative declarations that the laws should as emergency measures come into immediate operation.

Limitations upon the use of the referendum: The discussion above has related to the conditions under which legislatures may withdraw acts from the operation of the referendum. A statement should now be made of the constitutional provisions restricting the use of the referendum. South Dakota in 1898 prescribed that the referendum should not apply to laws for the "support of the state government and its existing public institutions", in addition to the exception which it made of laws necessary for the immediate preservation of the public peace, health or safety. Provisions similar to those of South Dakota have been placed in the constitutions of Maine, Colorado, California, Washington, Ohio, Arizona and Missouri. The specific exemption from the referendum of appropriations for the current expenses of the state government and for state institutions has been encouraged by the experience of Oregon with respect to the application of the referendum to appropriations for the State University of that state. Some of the states just referred to have much broader limitations than others with respect to matters which may not be subject to the referendum, but in general the provisions of these states may be classed together; and Ohio may also be classed with these states, although Ohio adds tax levies to the matters not subject to the referendum. Montana exempts from the referendum laws relating to the appropriation of money and local or special laws. New Mexico provides somewhat in detail that the referendum shall not apply to general appropriation laws, to the payment of the public debt, to the maintenance of public schools, or state institutions, or to special or local laws. Maryland forbids the application of the referendum to appropriations not exceeding the next previous appropriations for maintaining the state government or for maintaining or aiding state institutions. The Utah constitution merely provides that the referendum shall not extend to laws "passed by a two-thirds vote of the members elected to each house". Massachusetts has the most numerous limitations upon the use of the referendum, providing that "no law that relates to religion, religious practices or religious institutions; or to the appointment, qualifications, tenure, removal, or compensation of judges; or to the powers, creation, abolition of courts; or the operation of which is restricted to a particular town, city or political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth, or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition". In another part of the Massachusetts initiative and referendum provi-

⁹ *McClure v. Nye*, 22 Cal. App. 248 (1913).

sions, the referendum is excluded from use with respect to a series of rights granted by the declaration of rights of that state.

Limitations upon the Initiative: A number of specific limitations have been made by constitutional provisions with respect to the use of the initiative. Montana (1906) provided that the initiative should not be applicable to appropriations of money or to local or special laws. Ohio (1912) forbids the use of the initiative or referendum with respect to laws classifying property for taxation or for the single tax. Massachusetts excludes from the application of the initiative all of the matters referred to above as not being subject to the referendum; measures relating to the recall of judges or "to the reversal of a judicial decision"; and also prohibits an initiative amendment affecting the eighteenth amendment of the constitution as approved and ratified in 1918 and with respect to the limitations imposed upon the initiative. The eighteenth amendment is the one relating to prohibition of state aid to sectarian institutions.

The proposal of a measure after it has once been rejected is dealt with by constitutional provisions in Oklahoma, Nebraska and Massachusetts. Oklahoma provides that a measure rejected under the initiative and referendum shall not be again submitted within three years by less than a 25 per cent petition. The Nebraska constitution (1912) provides that "the same measure either in form or in essential substance shall not be submitted to the people by initiative petition (either affirmatively or negatively) oftener than once in three years". Massachusetts (1918) has a constitutional provision almost identical with that of Nebraska.

Use of the Initiative for Constitutional Changes: The initiative and referendum provisions in South Dakota, Utah, Montana, Maine and Washington do not permit the popular initiation of constitutional amendments. Maryland and New Mexico do not have the initiative, and Idaho without legislation for the purpose, of course, does not have the initiative with respect to constitutional matters.

The constitutions of a group of states provide for the use of the initiative upon constitutional amendments in the same manner as upon statutes, this statement being applicable to Oregon, Nevada, Missouri, Arkansas, Colorado and Mississippi. California substantially belongs in this same class, the only distinction in this state being that for statutes there is both a direct and an indirect initiative while for constitutional amendments there is merely a direct initiative. In seven states distinctions are made between constitutional amendments and statutes. In Oklahoma, Arizona, Nebraska and North Dakota a larger petition is required to propose a constitutional amendment. In Oklahoma an 8 per cent petition is sufficient for ordinary legislation and a 15 per cent petition is required for constitutional amendments.

In Arizona and Nebraska the initiation of ordinary legislation is accomplished by a 10 per cent initiative but for constitutional amendments a 15 per cent petition is required. In North Dakota the initiative for ordinary statutes requires a petition of 10,000 voters and the initiation of a constitutional amendment requires a petition of 20,000.

Michigan provides for an indirect initiative of 8 per cent for ordinary legislation and for a direct initiative of 10 per cent for constitutional amendments. Ohio provides for an indirect initiative upon ordinary legislation, with an original petition of 3 per cent and a supplemental petition of an additional 3 per cent, but for a 10 per cent direct initiative upon constitutional amendments.

Massachusetts provides for a much more complex method of initiating constitutional amendments than for the initiation of statutes. Under the Massachusetts constitution, 25,000 voters may present an initiative petition for a constitutional amendment. The proposed amendment then goes before a joint session of the general court and three-fourths of the members voting in joint session may amend the proposal. If in such joint session an initiative amendment receives the affirmative vote of not less than one-fourth of all the members elected it is referred to the next general court. In the next general court if an initiative amendment or if a legislative substitute for such amendment receives the affirmative votes of at least one-fourth of all the members elected, the proposed amendment is submitted to the people at the next state election, and is adopted if it is approved by a majority of those voting on the amendment, such majority equaling at least 30 per cent of the total number of ballots cast at the election.

Use of the referendum upon federal questions: A constitutional amendment in Ohio in 1918 expressly provides that the action of the legislature in ratifying a proposed federal amendment shall be subject to the referendum. The questions here present themselves as to whether the state amendments for the referendum are in terms broad enough to apply to federal questions, and also as to whether they may apply under the terms of the constitution of the United States. The constitution of the United States provides that the times, place and manner of holding elections for members of Congress shall be prescribed in each state by the legislature thereof. In the case of *State ex rel. Schrader v. Polley*,¹⁰ the court took the view that it was proper to submit a South Dakota act dividing the state into congressional districts, holding that the word legislature as used in the constitution of the United States refers to the state legislative power and includes therefore the initiative and the referendum; and the same view is taken in the Ohio case of *State ex rel. Davis v. Hildebrand*.¹¹

With respect to the ratification of amendments to the constitution of the United States it is prescribed that ratification shall be made by "the legislatures of three-fourth of the several states". In the case

¹⁰ 26 S. D. 5 (1910).

¹¹ 94 Ohio State, 154 (1916).

of *Herbring v. Attorney General*¹² the Supreme Court of Oregon denied an application for a mandamus to compel the submission to the people of Oregon of a joint resolution ratifying the national prohibition amendment, basing its judgment upon the view that the word "legislature" as used in the constitution of the United States is synonymous with "legislative assembly", and upon the further view that even if this were not the case the constitution of Oregon did not provide for a referendum upon such a matter. Under a substantially identical constitutional provision in Washington, the Supreme Court of Washington issued a mandamus compelling the submission to popular vote of the national prohibition amendment.¹³

Legislative Submission of Measures to the Referendum: In a number of the state constitutional provisions for the referendum it is expressly provided that the legislature shall have authority itself to submit measures to a popular vote. This is true of the constitutional provisions in Colorado, Washington, Arkansas, Maine, Michigan, Montana, Oregon and Arizona; and in the state of South Dakota such submission is under judicial construction permitted.

With respect to various types of laws a popular vote is required by constitutions after legislative action, and the necessity of submitting such laws to the referendum increases the number of measures submitted to popular vote in the states having the initiative and the referendum. Reference has been made above to the fact that, in Illinois, banking laws and laws increasing the state debt must be submitted to a popular vote before they are in effect, and similar constitutional provisions, as well as others, requiring a referendum upon legislative action, exist in a number of the states having the initiative and the referendum. Massachusetts in 1913 adopted a constitutional amendment expressly authorizing the submission of measures to the people of the state by the general court, but this authority is apparently withdrawn by the constitutional amendment of 1918, which provides for a popular initiative and referendum.

Petitions under the initiative and the referendum: The table given on page 81 indicates the number of petitioners required to propose measures by the initiative and to require the reference of measures enacted by the legislature to a popular vote. It will be noted from this table that 8 per cent is the more popular number for the initiative and 5 per cent the more popular for the referendum, although there has been a slight tendency to increase this percentage and some tendency also in recent years to require a specific number of voters rather than a percentage of voters. The state of Washington combines these

¹² 180 Pac. 328 (1919).

¹³ State *ex rel.* Mullen v. Howell, 181 Pac. 920 (1919). Upon the same matter see the recent decision of the Ohio Supreme Court, *Hawk v. Smith* (1919).

two methods by prescribing a certain percentage but that the total natures shall not exceed a specific number.

In the states where percentages are required for the initiative and referendum some difference results through the basis taken of the percentages. Oregon, for example, bases its percentages on the votes cast for justices of the supreme court at the last preceding election. A number of other states take as a basis the total vote for governor at the last preceding election, and such vote is usually likely to be larger than that for justices of the supreme court. Oklahoma takes as a basis the state office receiving the highest vote at the last state election. Upon a percentage basis it is true, of course, that the introduction of woman's suffrage materially increases the number of petitioners required in a particular state, and it is probably for this reason that North Dakota in her revised initiative and referendum provision (1918) requires a specific number of voters rather than a percentage of voters.

In a number of state constitutional provisions it is required that there be a certain geographical distribution of petitioners. The Maryland referendum provisions of 1915 require that not more than one-half of the petitioners be from any one county or from the city of Baltimore, and the Massachusetts amendment of 1918 provides that not over one-fourth of the signatures shall be from any one county. Ohio provides that at least one-half of the percentages required for the various petitions shall be had within one-half of the counties of the state. Nebraska provides that part of the percentages required shall be had within at least two-fifths of the counties of the state, and New Mexico requires for the referendum petition that the percentages required shall be from three-fourths of the counties of the state. Missouri requires that the several percentages be had within two-thirds of the congressional districts, Montana within two-fifths of the counties, and Utah by legislation within a majority of the counties.

With respect to the preparation and verification of petitions there has been a tendency toward greater detail in the constitutions, although these matters have been primarily left to legislation. California (1911) has introduced into its constitution a number of details as to the preparation of the petition, and this practice has been followed by some other states. Difficulties with respect to the circulation of petitions has caused the introduction into the Massachusetts constitution of an authority in the general court to forbid the circulation of petitions by corporations or co-partnerships, and for the licensing of individuals to circulate petitions. Utah in its statute of 1917 requires an application for blanks by five sponsors with the payment of a fee, and that signatures be made in the presence of and with certification by a notary public; each signature is required to be checked by the county clerk with the registration lists. The North Dakota constitution on the other hand provides that no law shall limit the number of copies of the petition to be circulated or the payment of compensation for the circulation of petitions.

North Dakota provides in her constitution that the decision of the Secretary of State adverse to a petition shall be reviewable by the

preme Court, and that if the petition is under review the measures will be submitted to the voters, and if a majority voting upon the measure approves it, the petition shall not be invalid. The Ohio constitutional amendment of 1912 provides that no measure shall be held unconstitutional or void on account of the insufficiency of the petitions."

Under the limited initiative for constitutional amendments in the Michigan constitution of 1908 it was provided that "petitions shall be signed at the regular registration or election places at a regular registration or election under the supervision of the officials thereof, who shall verify the genuineness of the signatures and certify the fact that the signers are registered electors of the respective townships and cities in which they reside."

As suggested above, however, most of the details as to the preparation and verification of petitions have been left to the laws carrying into effect constitutional provisions. Fraud in the preparation of petitions has been discovered in a number of cases, the most important of which were those in Oregon in 1912 and in Ohio in 1913. Judicial statements regarding frauds will be found in Barnett's *Operation of the Initiative, Referendum and Recall in Oregon*, pages 64 to 74, and in the case of *State ex rel. Gongwer v. Graves*.¹⁴

Largely as a result of the frauds so practiced, somewhat detailed legislation was enacted in Oregon and Ohio and similar legislation now exists in Montana, Washington and Nebraska. A copy of the Oregon law is printed as an appendix to this pamphlet. In Montana the local election officials are required by statute to compare the signatures of petitioners with registration lists, and a similar requirement exists by statute in Ohio for the counties where registration is provided by law. Under the Nebraska legislation of 1919 every circulator of a petition must be not less than 18 years of age and a resident of the county wherein the petitioners reside, although a person otherwise qualified may be permitted to circulate petitions outside the county of his residence upon filing a bond with the Secretary of State.

Under Washington legislation the proposers of a measure may deposit blank petitions with the registration officer of any city, town or precinct and such officer is required to display placards in his office indicating that the petition may be signed there; furthermore he is required to keep his office open for the purpose of permitting signatures, from 6 until 9 o'clock on two evenings a week for the 90 days following the adjournment of any session of the legislature, for referendum petitions, and during the 90 days preceding the time for filing, in the case of initiative petitions. Registration officers are required to check the signatures upon petitions with the names on the registration lists.

The matters referred to here are not all of those dealt with by constitutional and statutory provisions with respect to petitions, but probably are the more essential of these matters. It should be further stated, however, that substantially all of the states having the institutions of the initiative or the referendum have corrupt practice legis-

¹⁴ 90 Ohio State 311 (1914). See also the case of *Thompson v. Vaughan*, 192 Mich. 512 (1916).

lation penalizing the false signing of petitions or the false obtaining of signatures, and some also have statutory provisions limiting the amounts of expenditure and requiring verified statements of expenditures to be filed with certain public officers.

Titles: Ballot titles have occasioned a good deal of difficulty and the importance of an accurate ballot title is apparent if the voters are not to be misled with respect to matters submitted to them. Few constitutional provisions deal with the matter of ballot titles. The North Dakota constitutional amendment for the initiative and referendum and the Maryland amendment for the referendum provide that the Secretary of State shall prepare ballot titles. The Massachusetts amendment of 1918 itself prescribes the general form of ballot and provides that the proposed amendment or proposed law "shall be described on the ballots by a description to be determined by the Attorney General, subject to such provision as may be made by law."

The most detailed provisions regarding ballot titles, however, may be found in statutes with respect to the initiative and referendum. In Oregon, Utah, Oklahoma, Missouri, California, Nebraska and Washington, statutes provide for the preparation or approval of ballot titles by the Attorney General, with an appeal to the courts if there is dissatisfaction with his action. Less elaborate statutory provisions with respect to ballot titles may be found in Arkansas, Colorado and New Mexico.

Publicity of Measures: It is of course true that the intelligence with which voters may pass upon measures referred to them depends upon the machinery for bringing such measures to their attention. A number of state constitutions provide for the publication of measures to be submitted to the people, and four constitutions expressly provide for publicity pamphlets. These constitutions are those of Ohio, Washington, North Dakota and Massachusetts, although in all of these cases the details as to the pamphlets are left for legislative determination.

The term "publicity pamphlet" has come to be used in this country with respect to pamphlets prepared under official supervision containing the text of measures to be submitted to popular vote, together with arguments for and against such measures. Where such publicity pamphlets are required by constitutions or statutes there is also a requirement that copies be prepared and sent to the voters of the state. In addition to the states whose constitutions provide for publicity pamphlets such pamphlets are required by statute in Oregon, Oklahoma, Utah, California, Arizona and Nebraska. In Montana there is an apparently optional provision for the preparation and printing of the arguments, and in Colorado there has been legislation for publicity pamphlets which seems never to have been employed. In the

state of Nevada the text of measures is required to be published in the newspapers, and such newspaper text must be sent to all voters. In Maryland, also, by constitutional provision the texts of all referendum measures must be furnished to each voter.

Popular Votes upon Initiated and Referred Measures: In general the constitutional provisions for the initiative and the referendum provide that measures so submitted shall be adopted if approved by a majority of those voting thereon. The Idaho constitutional provisions for the initiative and referendum, which have never come into effect because of the absence of legislation, provide that legislation submitted by the initiative "shall require the approval of a number of voters equal to a majority of the aggregate vote cast for the office of governor" at the general election at which the measure is submitted. Oklahoma provides that any measure "referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast in such election". In Nevada when a legislative act is referred to the people by petition the constitution provides that it must be approved by "a majority of the electors voting at a state election", although it is doubtful whether this really requires a majority at the election, because the same constitutional amendment provides that the act shall be void and of no effect when such a majority signifies disapproval. If the Nevada provision is to be construed as requiring a majority of the vote at an election in order to approve an act passed by the legislature, and referred on petition, this would place laws passed by the legislature at a distinct disadvantage as compared with initiated laws which are expressly made effective upon their approval by the qualified electors voting thereon.

New Mexico under a referendum provision provides that no act of the legislature shall be rejected unless it is disapproved by a majority of the legal votes cast thereon and by not less than 40 per cent of the total number of legal votes cast at the general election at which the measure is submitted. In Nebraska an initiated constitutional amendment or an initiated law requires the approval of a majority of the votes cast thereon and of 35 per cent of the total vote cast at the election. With respect to constitutional amendments the adoption on popular initiation is easier than on legislative proposal in Nebraska, because a constitutional amendment proposed by the legislature requires a majority of all votes cast at the election.

Arkansas and Mississippi also require a majority of all votes cast at the election to adopt a constitutional amendment proposed by the legislature, and only a majority of the votes cast thereon to adopt amendments proposed by the initiative. They, as well as Nebraska, penalize the legislative proposal of amendments, as against the popular proposal of amendments.

The initiative and referendum provisions of the state of Washington provide that any measure "shall take effect and become the

law if it is approved by a majority of the votes cast thereon; provided that the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise."

As with respect to other matters affecting the initiative and the referendum, Massachusetts has more detailed provisions than other states as to the popular majorities required for the approval of measures. In Massachusetts a legislative amendment to the constitution is approved by a majority of the voters voting thereon; an initiative amendment or a legislative substitute for such an amendment must be approved "by voters equal in number to at least 30 per cent of the total number of ballots cast at such state election, and also by a majority of the voters voting on such amendment." An initiated law in Massachusetts becomes effective "if it shall be approved by voters equal in number to at least 30 per cent of the total number of ballots cast at such state election, and also by a majority of the voters voting on such law." A legislative act referred on petition or an emergency law sought to be repealed by the referendum cannot be rejected if the negative vote is less than 30 per cent of the total number of ballots cast at the election.

Amendment and repeal of measures approved by the people.

A number of constitutions have thought it desirable to restrict the methods of amending or repealing measures approved by the people. Nevada provides that an initiative act shall not be repealed by the legislature within three years, and that an act of the legislature referred to the people on petition shall not be set aside except by direct vote of the people. This Nevada provision permits an initiative measure to be amended or repealed by the legislature, but not an act of the legislature which has been referred to and approved by the people. This distinction is without any real value, and not only restricts the legislature as to the one type of measure, but is likely to add materially to the number of measures which must be submitted to popular vote. Mississippi provides that no measure enacted by a vote of the people shall be amended or repealed by the legislature except by a vote of three-fourths of the members of each house, and the North Dakota amendment of 1918 requires a two-thirds vote for amendment or repeal. Washington provides that no law approved by a majority of the electors shall be amended or repealed for two years except by popular vote, and Arizona makes substantially the same requirement. California and Michigan leave to the legislature full power to amend or repeal acts adopted under the referendum, but do not permit initiative measures to be amended or repealed except by popular vote unless the measure itself has otherwise provided. The Massachusetts constitutional amendment of 1918 expressly provides for the legislative power of amendment and repeal of laws approved by the people, subject, as in the case of other legislation, to the veto power and the referendum.

The provisions here commented upon make it clear that they involve a distinct increase in the compulsory referendum, for if an act

once adopted by popular vote can be amended or repealed only by popular vote, this involves increasing the number of measures which must necessarily be submitted to such a vote, as the number of measures which have already been approved by the people increases.

Effect of the initiative and referendum upon the Governor's veto power: Most of the constitutional provisions with respect to the initiative and referendum contain a provision that the Governor's veto power shall not extend to measures initiated by or referred to the people, although these provisions are couched in somewhat different phraseology. Upon a measure initiated by popular petition there would, of course, be no opportunity for the exercise of the veto power, where the popular initiative is one directly to a vote of the people. Where the popular initiative is an indirect one, with submission of the matter to the legislature, a veto power of course might be authorized if this were desired. However, Maine is the only state which has any provision regarding a veto power in such a case, and in this state it is provided that if any measure initiated by the people and passed by the legislature without a change is vetoed by the governor and his veto sustained by the legislature, such measure shall be referred to the people at the next general election.

Where a measure is adopted by the legislature without any form of initiative petition, the measure is subject to the governor's veto power under the ordinary constitutional provisions with respect to this power. The constitutional provision that the veto power shall not apply to laws referred to the people is of chief application to the cases in which the legislature in passing an act is authorized to refer such act to the people without any popular petition or other demand for such action. In such a case the legislature by passing the act and referring it to the people is able to avoid altogether the executive veto, and this is the effect of the initiative and referendum provisions in Oregon, Montana and a number of other states.

VI. ANALYSIS OF RESULTS.

Use of the Initiative and Referendum: In discussing the general results of the initiative and referendum, it should be borne in mind that the referendum was actually being used to a large extent in the American states before the introduction of the initiative and referendum for laws. Through the submission of constitutional amendments in all of the states except Delaware, and through the necessity of submitting laws upon a small number of other subjects in many of the states, measures were being submitted to popular vote and in some of the states were being submitted in large numbers. The initiative and referendum have added to the institution of the referendum as it previously existed, and for the states which have adopted the broader institutions have of course increased materially the number of measures being submitted to the popular vote. In discussing the measures submitted in the states which have adopted the initiative and referendum, it is impracticable to separate the measures which would have been submitted to a popular vote irrespective of the adoption of the initiative and referendum. However, it should be borne in mind that the referendum as it existed before a state's adoption of the broader institutions has a direct bearing upon the number of popular votes had under the initiative and referendum.

In discussing the popular votes under the initiative and referendum it should also be borne in mind that Maryland and New Mexico have only the referendum; that Maine, Montana, South Dakota, Utah and Washington have an initiative upon ordinary legislation and a referendum, but no initiative upon constitutional matters.

A table is given below of the number of submissions of questions to popular vote in the states adopting the initiative and referendum. When a state has adopted the initiative and referendum, all measures submitted to the people after that date are included in this table, although as indicated above many of these measures are such as would have been voted upon by the people before the adoption of the initiative and referendum. In reading this table it should be borne in mind that, at the beginning, but one state had the initiative and referendum, and that in 1919, twenty-two states have either one or both of these institutions, although one state (Idaho) has not a possibility of exercising the power under the constitutional amendment there adopted. It should also be said that the Massachusetts constitutional amendment has been adopted too recently for any use to have been made of it. In reading this table it should also be borne in mind that there are ordinarily few submissions of constitutional questions or measures in odd

years, and that comparisons must be made primarily for the even years.

Submissions by Years.

Year	Total Submissions	Total Adopted	Year	Total Submissions	Total Adopted
1900.....	2	2	1913.....	17	12
1902.....	3	3	1914.....	188	64 (b)
1904.....	6	3	1915.....	18	1
1906.....	16	12	1916.....	98	33
1908.....	33	19	1917.....	22	10
1909.....	3	—	1918.....	100	64
1910.....	66	18	1919.....	9	5
1911.....	6	3			
1912.....	130	58 (a)		717	307

(a) Three of these held not adopted by Supreme Court.

(b) One of these held not adopted by Supreme Court.

This table indicates a rather rapid increase in measures submitted in the states having the initiative and referendum until 1914, with then a material reduction for the years 1916 and 1918. The increase in measures submitted to the people in these states between 1900 and 1914 may be attributed in part to the rapid increase in the number of states in which the initiative and referendum have become operative, and in part to the greater use of these institutions in the earlier years of their adoption.

The decrease in the total number of measures submitted since 1914 may perhaps be attributed in part to the fact that the institutions have ceased to be quite as new in a number of states, and perhaps in part to the fact that in some states, such as Oregon, the adoption of woman's suffrage has increased quite materially the difficulty of obtaining the requisite number of signatures to petitions.

A table is given below indicating by states the total number of measures submitted during the whole period within which the initiative and referendum have been operative in each state. This table indicates separately the manner in which the different measures have come to be submitted to a popular vote. With respect to constitutional amendments it has already been said that in some states the initiative may not be used, although in most of the states, as is indicated by this table, two methods of presenting constitutional amendments exist side by side, the regular and older method of proposal through the representative legislature, and the newer method of proposal through popular initiative. Here again it should be borne in mind that New Mexico and Maryland do not have the initiative and that Maine, Montana, South Dakota, Utah and Washington do not have an initiative for constitutional amendments. In a number of states the legislature may not of its own motion refer a matter to popular vote.

It will be readily seen from this table that Arizona, California, Colorado, Missouri, Oklahoma, Oregon and South Dakota are the states that have used the popular submission of measures most vigorously, and it should be noted in this connection that Oregon which has

a much larger number of such measures, has been using the initiative and the referendum for a much longer period than have the other states just referred to.

Total Number of Measures Submitted.

State	Years of Submissions	Total Submissions	Constitutional Amendments				Laws				
			Proposed by Legislature	Proposed by Initiative	Total Amendments Submitted	Total Adopted	Proposed by Initiative	Referred by Legislature	Referred on Petition	Total Laws Submitted	Total Adopted
Arizona.....	1912-18	54	6	15	21	11	18	1	14	33	22
Arkansas.....	1912-18	19	6	5	11	6*	.....	.....	1	8	3
California.....	1912-18	98	51	15	66	29	15	8	9	32	12
Colorado.....	1912-18	61	8	17	25	8	24	1	11	36	12
Maine.....	1908-18	17	11	.....	11	6	1	.....	5	6	3
Maryland.....	1916-18	2	2	.....	2	2	.....	.....	.....	.....	.....
Michigan.....	1914-18	16	12	4	16	10	.....	.....	.....	.....	.....
Mississippi.....	1918	2	1	1	2	.....	.....	.....	.....	.....	.....
Missouri.....	1910-18	48	29	14	43	1	.....	1	4	5	1
Montana.....	1902-18	23	9	.....	9	5	9	4	1	14	9
Nebraska.....	1914-18	10	3	4	7	2	.....	1	2	3	1
Nevada.....	1908-18	12	11	.....	11	11	.....	.....	1	1	1
New Mexico.....	1912-18	8	7	.....	7	5	.....	1	.....	1	1
North Dakota.....	1916-18	14	5	7	12	12	.....	.....	2	2	2
Ohio.....	1913-18	21	6	12	18	6	.....	3	3	3	.....
Oklahoma.....	1908-18	45	10	23	33	12	6	2	4	12	7
Oregon.....	1904-19	170	37	43	80	31	62	12	16	90	35
South Dakota.....	1900-18	73	50	.....	50	27	9	.....	14	23	8
Utah.....	1918	3	3	.....	3	3	.....	.....	.....	.....	.....
Washington.....	1914-18	21	2	.....	2	.....	9	3	7	19	3
		717	269	160	429	187	160	34	94	288	120

* Three held not adopted by supreme court.

Elections at which a large number of measures have been submitted. Since the adoption of the initiative and referendum there have been ten elections in the states adopting these institutions in which fifteen or more measures have been submitted to a popular vote. The table printed below gives an analysis of the measures submitted at these elections, by the types of measures submitted.

Ten Principal Elections.

State.	Year of Submission	Total Submissions	Constitutional Amendments				Laws				
			Proposed by Legislature	Proposed by Initiative	Total Amendments Submitted	Total Adopted	Proposed by Initiative	Referred by Legislature	Referred on Petition	Total Laws Submitted	Total Adopted
Arizona.....	1914	19	.....	5	5	2	10	.....	4	14	7
California.....	1914	47	22	8	30	18	9	4	4	17	9
California.....	1918	25	18	1	19	8	3	.....	.....	6	1
Colorado.....	1912	32	3	11	14	3	12	1	5	18	5
Colorado.....	1914	16	3	5	8	2	3	.....	5	8	2
Missouri.....	1914	15	8	3	11	.....	.....	.....	4	4	.....
Oregon.....	1908	19	4	6	10	5	5	.....	4	9	6
Oregon.....	1910	32	4	7	11	4	18	2	1	21	6
Oregon.....	1912	37	6	8	13	6	20	.....	3	23	6
Oregon.....	1914	29	8	11	19	4	8	2	.....	10	.....
		270	76	65	140	52	91	9	30	130	42

Analysis of submissions by types of measures.

(a) *Constitutional Amendments*: Reference has already been made to the fact that a compulsory referendum existed in all states except Delaware before the adoption of the initiative and referendum by any state, and to the fact that this compulsory referendum has continued for such measures. The compulsory referendum upon constitutional amendments through legislative submission of such amendments presents to the voters of some states without the initiative and referendum a large number of measures to be voted upon at each election. Not only this, but in a state like California, the legislative submission of constitutional amendments was responsible for the submission of numerous measures to the people before the adoption of the initiative and referendum. In Louisiana which does not have the initiative and referendum, there were submitted by the legislature, in the ten biennial elections between 1900 and 1919, one hundred and thirty-two constitutional amendments of which one hundred and six were adopted. In 1912 the legislature proposed to the voters of Louisiana nineteen constitutional amendments and in 1914 and 1916 eighteen constitutional amendments for each year.

California adopted the initiative and referendum in 1911, the first measures under which were submitted in that state in 1912. In 1911, however, the legislature of California submitted 23 proposed constitutional amendments to the voters of that state and in each of the years 1906 and 1908 the legislature of California submitted fourteen measures to the voters. The fact of this frequent submission of constitutional amendments before the adoption of the initiative and referendum in California must be taken into consideration in considering the very large total of submissions since the introduction of the initiative and the referendum in that state.

Referring to the table of total submissions on page 103, it will be noted that in the states having the initiative and referendum seven hundred and seventeen measures have been submitted to a popular vote. Of these measures four hundred and twenty-nine were proposed constitutional amendments upon which the referendum is compulsory. That is, in order to change the constitution the measures must be submitted to a popular vote. Of the four hundred and twenty-nine constitutional amendments submitted to a popular vote, two hundred and sixty-nine were proposed by the legislature and one hundred and sixty by the initiative. A large number of these proposed constitutional amendments relate to matters of relatively small importance and the popular submission in the larger number of these cases was made necessary by the fact that if the changes were to be made at all they must be made by constitutional amendment. That is, more than four out of each seven of the proposals submitted to the people in states having the initiative and referendum were submitted in large part because of the fact that detailed state constitutions made it necessary to employ a compulsory rather than an optional referendum. A very large number of the constitutional amendments proposed by the legislature were ones upon which a

popular vote would in all likelihood not have been demanded had the necessity for such a vote depended upon popular petition.

In 1914, forty-seven measures were submitted to a popular vote of the people of California, but of these forty-seven, thirty were proposed constitutional amendments and twenty-two of these proposed constitutional amendments were submitted by the legislature. Referring now to the elections in which the largest number of measures has been submitted to a popular vote (Table on page 103), the optional referendum, that is—a referendum not necessary for the adoption of the measure, was applied to but seventeen of the forty-seven measures.

In the Oregon election of 1910, thirty-two measures were submitted to a popular vote, of which eleven were constitutional amendments. In the Oregon election of 1912, thirty-seven measures were submitted to the popular vote, of which fourteen were constitutional amendments. In the Oregon election of 1914, twenty-nine measures were submitted to the people, of which nineteen were constitutional amendments. The statements here made are perhaps sufficient to indicate that to a very large extent the measures submitted in initiative and referendum states are constitutional amendments submitted under a compulsory referendum rather than laws submitted under an optional referendum.

(b) *The extent of legislative initiative as compared with popular initiative.* Referring again to the table on page 103, it will be seen that of the seven hundred and seventeen measures submitted to a popular vote in the initiative and referendum states, one hundred and sixty were constitutional amendments proposed by popular initiative and one hundred and sixty were laws proposed by popular initiative. That is, out of the seven hundred and seventeen measures submitted to popular vote three hundred and twenty were initiated by popular petition. That is, about three out of seven of the measures submitted to a popular vote were actually initiated by a popular petition.

Of the seven hundred and seventeen measures submitted to a popular vote, however, ninety-four laws were referred on the basis of popular petition so that they may properly be added to the total of measures upon which popular petition forced a vote. Adding the ninety-four legislative measures referred on the basis of popular petition to the three hundred and twenty measures initiated by popular petition, we have a total of four hundred and fourteen measures whose submission to a vote was forced by a popular petition. That is, substantially four out of every seven measures were submitted as a result of popular action forcing submission.

The remaining three hundred and three measures were submitted as a result of legislative action, and thirty-four of these three hundred and three were referred to the people by the legislatures as a result of legislative action without waiting for any specific popular demand by petition.

(c) In view of the fact that the compulsory referendum upon constitutional amendments has played such a large part in forcing a large number of popular votes upon measures, it may be well to sum

up the relationship between the optional and the compulsory referendum in the states having the initiative and the referendum. It has already been suggested that of the seven hundred and seventeen measures submitted in these states four hundred and twenty-nine related to constitutional amendments, as to which if the measures were to be adopted a popular vote was compulsory. It is of course impossible to know to what extent under a different machinery the one hundred and sixty initiated amendments would have been handled in another way, but it is possible to say that the present organization of state constitutions made necessary the submission of four hundred and twenty-nine compulsory referenda out of seven hundred and seventeen submissions.

From the standpoint of the voters the thirty-four measures referred by legislatures to a popular vote are compulsory referenda, although of course some of them were optional in the sense that the legislature did not have to submit them in order to bring the measures into effect.

(d) *The extent of the popular vote upon measures submitted to the people:* It will be of value to review briefly the extent of the popular vote in the states here being dealt with. In Arizona the popular vote upon measures in the elections from 1912 to 1916 presented a fair proportion of the total number of those voting in the general elections; although in 1918 there was a distinct reduction in the popular vote upon measures, and upon several measures the popular vote fell below 50 per cent. In Oregon, where the greatest number of measures have been submitted, the proportion of vote upon measures to the total vote at elections has on the whole been large. For the years 1904 to 1919 the average proportion upon all measures was well over 70 per cent, although there was a slump in popular voting upon measures in 1918. In discussing the proportion of votes in Oregon it should be mentioned that a number of measures have been submitted at special elections. In these cases it is of course improper to compare the total vote with the vote upon measures (inasmuch as the two are substantially identical), and such votes have been excluded from the statement given above. The votes upon measures in Arkansas, South Dakota and Washington have compared favorably with those in Oregon, the average in Washington being above 70 per cent of the total vote at the election. In North Dakota the total vote upon measures has been relatively large as compared with that upon general elections. In Nebraska, Ohio and Oklahoma the popular vote has been a fair one. In Michigan, for the sixteen measures voted upon at five elections between 1914 and 1918, the popular vote has averaged over 85 per cent of the total vote for candidates at the same elections.

In Missouri the biennial elections of 1910, 1912, 1914, 1916 and 1918 have brought out relatively large votes upon measures, the votes in 1910, 1912 and 1914 averaging well above 70 per cent of the total vote in the elections. In each of the elections of 1910, 1912 and 1914 in Missouri there was one important question which attracted the attention of the voters. In 1910 the liquor question, in 1912 the tax issue, and in 1914 the issue of woman's suffrage all brought out strong popular votes; and in each of these elections there was an effort on the

part of large interests in the community to have the voters vote "no" upon all measures so that they would be surer of voting "no" upon measures as to which there was the greatest controversy. On this account all measures submitted in Missouri in 1910, 1912 and 1914 were rejected; eleven measures were rejected in 1910, nine in 1912 and fifteen in 1914.

In California popular voting has been uneven. In some elections a good proportion of the electors have voted upon measures, but there are a number of cases in which the total popular vote upon measures falls to 50 per cent or less of the total popular vote in the elections.

Colorado is the one state which makes the worst showing as to popular votes. At the Colorado election in 1912, thirty-two measures were submitted to a popular vote. Of these measures but one received a vote of over 70 per cent of that cast in the general election. Only four measures (including that which received over 70 per cent) received over 50 per cent of the total vote at the election, and twelve had either 30 per cent or less of the total vote cast at the election. Of the sixteen measures submitted in 1914, one had 95 per cent, three above 60 per cent, six a popular vote exceeding 50 per cent of the total vote at the election, (prohibition having 95 per cent), and all of the other measures had cast upon them 50 per cent or less of the total vote at the election. Upon the eight measures submitted in 1916 a better showing was made, two measures having cast upon them 81 per cent of the total vote, and four others having a total vote exceeding 50 per cent. Of the five measures submitted in 1918 almost an equally good showing was made.

Special attention should be called to the results in states which require for the adoption of measures more than a majority of those voting upon the question. Arkansas, Mississippi, Oklahoma and Nebraska require a majority of all votes at the election to adopt constitutional amendments proposed by the legislature, and in these states, as well as in others (such as Illinois) having a similar requirement, it is difficult to obtain such a vote, although Nebraska has in some cases adopted amendments under a plan which obtains party endorsements and then counts all straight party votes for the measure. Oklahoma requires a majority of all votes at the election to adopt initiated laws or constitutional amendments, and a number of measures have failed because of this requirement; in one case a special election was used for submissions, apparently because a majority at such an election would be substantially equivalent to a majority of those voting on the question.

New Mexico requires a negative vote equal to forty per cent at the election to reject a legislative act on the referendum, but no votes yet have indicated how this provision will work. In Nebraska initiated amendments and laws must receive an affirmative vote equal to 35 per cent of the total vote at the election, and though the Nebraska provision has not been thoroughly tested, the 35 per cent requirement appears to have made no difficulty.

The percentages of affirmative votes on pages 71 and 72 of this pamphlet are of interest in this connection. Upon state-wide public policy questions it will be noted that, while the affirmative votes in only

two cases constitute a majority of all votes cast at the election, several of them run close to 50 per cent, and had they involved real issues, all of them would have resulted in popular approvals, under a rule requiring an affirmative vote equal to 40 per cent of the total vote at the election. Upon these questions it should be borne in mind that the questions are phrased in general language so as to promote affirmative voting, and that the negative vote would probably have been larger except for the fact that it was known that the vote would not be decisive of the issues involved.

Of the state-wide measures appearing on pages 72 and 73 it will be noted that few measures approved by a majority voting thereon would have been rejected had such majority been required to equal 35 or 40 per cent of the total vote at the election. This applies to all state-wide questions submitted, including bank laws, with the exception of the measures submitted during the years from 1892 to 1898. During this period questions appeared upon the general ballot, in such a position that they could not easily be voted upon, but the separate or "little ballot" provided by statute in 1899 removed this difficulty.

The table of popular votes in Chicago since 1905, printed on pages 74 to 79 of this pamphlet, indicates about the same results as does the tables of state-wide votes. Of the questions which received a majority of the votes cast thereon, forty-two had an affirmative vote of more than 40 per cent of the total vote at the election; thirteen between 35 and 40 per cent; and eight less than 35 per cent of such vote.

Proportion of measures adopted: Little conclusion can be drawn from the proportion between the number of measures adopted and rejected by popular vote. From the table on page 102 it will be seen however that the people have not been inclined to approve all of the measures submitted. The elections of 1910, 1912, 1914 and 1916 show a distinct conservatism upon the part of the electorate.

A table is presented below indicating the total adoptions, classified by methods of submission, in the states having the initiative and referendum or referendum only. Laws referred on petition are normally referred because of some strong opposition justifying the opponents of the legislation in going to the trouble or expense of preparing a petition. The real test of the referendum in this case, therefore, so far as the purpose to be accomplished is concerned, is the proportion of rejections rather than that of adoptions. Tested in this manner the referendum on petition has accomplished its purpose most effectively, having rejected 57.45 per cent of the measures so submitted, whereas the initiative has obtained the adoption of less than 40 per cent of its proposals.

Laws referred by the legislature have the highest proportion of adoptions, and this was probably to be expected in view of the fact that in these cases the legislature was either shifting its own responsibility to the people or was submitting to them a measure upon which

it might have been supposed a distinct popular sentiment existed. The smallest proportions of adoptions are for amendments proposed by the initiative and laws proposed by the initiative. With respect to amendments proposed by the legislature the adoptions and rejections just about balance each other, and this situation is not very distinctly different from that in the states which do not have the initiative and referendum. For the country as a whole, during the period from 1901 to 1919, some 1500 constitutional amendments were submitted to the people of which about 900 were adopted so that for the country as a whole the popular action upon amendments is somewhat more favorable than for the amendments proposed by the legislature in the states having the initiative and the referendum. However, attention should be called to the fact that the low percentage of adoptions of amendments proposed by the initiative in the states here under discussion has done some little to lower the average adoption of constitutional amendments for the whole country.

In the states having the initiative for constitutional amendments, the proportion of popular approvals of amendments submitted by the legislature is smaller than in the other states of the country, though in these states, the people seem more inclined to approve amendments proposed by the legislature than amendments proposed by popular petition. Of the states having the initiative, fourteen permit its use for constitutional amendments. In these fourteen, one hundred and eighty-five amendments were submitted by the legislature, and eighty-one adopted, a proportion of 43.78 per cent; one hundred and sixty were submitted by the initiative and fifty-eight adopted, a proportion of 36.25 per cent.

Table of Submissions and Adoptions.

	Submitted.	Adopted.	Proportion.
Amendments proposed by legislature.....	269	129	47.95
Laws referred by legislature.....	34	18	52.94
Amendments proposed by initiative.....	160	58	36.25
Laws proposed by initiative.....	160	62	38.75
Laws referred on petition.....	94	40	42.55
Total	717	307	42.81

VII. PROBLEMS AND CONCLUSIONS.

General statement: In connection with the initiative and referendum several distinct problems present themselves:

- (a) The drafting of the measure to be submitted under the initiative;
- (b) The obtaining of initiative or referendum petitions;
- (c) The submission of measures in such a manner that they may be acted upon intelligently by the voters, and
- (d) The popular vote upon proposals.

Draftsmanship: It may of course be truly said that draftsmanship of laws enacted by representative legislatures is defective, and that the draftsmanship of initiated laws is not materially worse than much of the draftsmanship of laws enacted under the representative system. However this does not deny the need for more expert draftsmanship, but rather asserts the need for such draftsmanship as to representative legislative action as well as with reference to initiated measures, if the initiative is to be adopted.

The relationship between direct and indirect initiation of measures under existing constitutional provisions has already been discussed, and this discussion has a direct bearing upon the problem of draftsmanship of initiated measures. In the states which permit the legislative proposal of alternative measures, the two proposed measures then going to a vote of the people, there is of course no opportunity for improving the initiated measure, and there is an added complexity in the issue presented to the voters. In states where, as in Ohio and Massachusetts, there is an indirect initiative with a possibility of correcting a measure upon the basis of legislative deliberation, there is a possibility of improving the quality of the measure before it is finally submitted to the popular vote. This was also true under the rejected Wisconsin plan and under a possible combination of the Wisconsin plan with a suggested amendment which was rejected by the general assembly in Illinois in 1913.

Any plan which enables a small group of persons to force a vote upon a proposal without possibility of revision, is to that extent defective. Legislative deliberation upon a proposed draft of a measure is of value, and such deliberation is possible under the Ohio and Massachusetts plans. Under these plans of course there is a somewhat greater degree of delay in submitting measures to a popular vote, unless a special election is called, and special elections are of course expensive.

Petitions: As has already been suggested in the analysis of the initiative and referendum provisions, the size of petitions varies considerably in the several states. The obtaining of petitions is a matter of some difficulty and expense even though it be recognized that a large number of people sign petitions without very much thought. The obtaining of an 8 per cent petition for an initiative measure becomes of course more difficult the larger the number of voters. The granting of woman's suffrage in Oregon has probably had an appreciable effect upon the number of initiative proposals. In a state like Illinois the difficulty becomes greater, and will be increased by the granting of woman's suffrage. Large petitions on the other hand do not necessarily represent a large sentiment in the community in favor of a measure.

A small petition obtained under careful safeguards is likely to represent much more of an actual public sentiment than a large petition obtained through the hiring of "professional signature getters". A plan such as that which is made optional in Washington, of leaving petitions with registration officers has distinct merit, although such a plan would materially increase the difficulty of obtaining a large petition.

In a number of states a certain geographical distribution of petitioners is required, and this seems desirable in order to make sure that the measure being petitioned for is not merely one sought by people in a particular community. However, the state of Illinois presents a problem somewhat different from that of almost all of the states which have adopted the initiative and the referendum, although Maryland and Massachusetts are perhaps most comparable. In the state of Illinois there is one county with very nearly half of the population of the state, and some method will have to be devised to make sure that initiative petitions represent not merely a sentiment within that county, and also that the initiative and referendum if adopted will not be employed to impose legislation upon that county by the rest of the state.

If an initiation is to be indirect, with a possibility of amending the proposal before its submission, upon the basis of legislative deliberation, there may be no great need for a large petition. In fact the need for a petition to present the measure to the legislature hardly exists at all, and if a plan of this sort be adopted, the petition may come after the legislative deliberation as in the case of the Ohio supplementary petition. In such a case a petition need not be large, if it may be employed only in the case where a proposed measure has received the support of a certain number of members of the general assembly.

Submission to the voters: The problems of ballot title and of arguments upon measures may properly be left to the legislature, although these are highly important matters from the standpoint of any effective operation of the initiative and the referendum.

Under the constitutional provisions of a number of states alternative and competing measures are expressly permitted, several states providing that alternative measures shall be submitted in such a way that the vote shall be in the alternative. The submission of directly competing measures, either by provisions for alternative measures or otherwise, is apt to lead to grave confusion in the minds of most intelligent voters, and this plan should be avoided if possible in the adoption of any initiative and referendum scheme.

A popular vote is of little value:

(1) if the questions submitted are so trivial or so local in character as not to be of interest to those to whom they are submitted.

(2) if the questions are so complicated and technical that the voter has no satisfactory means of informing himself regarding them.

(3) If the questions are submitted in such great number that the voter, even if he might possibly render a satisfactory judgment upon any one of them, can not inform himself regarding the merits of all the measures upon which he must pass.

It has already been suggested that many constitutional amendments submitted to voters are local or trivial, and the same statement may be made of many laws or proposed laws submitted through the initiative and referendum. However, the legislative proposals submitted through the initiative and referendum have in the main related to matters of general interest. The publishing of arguments upon measures of course meets in part the problem of informing voters upon matters to be submitted to them, although it can hardly be said that the so-called publicity pamphlets have in any state fully and satisfactorily informed the voters upon all measures to be submitted.

If the initiative and referendum are to be adopted, however, it seems unwise to specify in detail matters to which they are not to be made applicable. This plan which has been adopted in Massachusetts seems less desirable than some plan of applying the initiative and referendum so that it will limit itself automatically to matters of distinct general interest.

Popular vote: As has been already suggested the more common provision in this country is that measures submitted to the people shall be adopted upon approval by a majority of those voting thereon. The experience of Colorado in the adoption of a number of important matters when less than 30 per cent of the voters expressed themselves either way, raises some doubt as to the validity of the plan of adopting merely upon the vote of the majority of those voting thereon. It is, of course, at the same time quite clear that to require a majority of those voting at a general election makes the institution substantially unworkable, no matter how great the popular interest may be, and this statement is particularly applicable with respect to the present constitutional provisions of Illinois regarding the amendment of the constitution.

A great deal has of course been said about the initiative and referendum as minority government, under any plan which provides for the adoption of a measure without a majority of the total vote at a general election. Of course it may be replied to this that very little of our government in the election of public officers is majority government. A plurality elects the highest state officers, as a plurality of the popular vote has often resulted in the election of a president. This statement applies to the heads of tickets who obtain the highest vote, the vote by which, generally, the highest vote in an election is measured, when a proposed measure requires for its adoption a majority of the total vote in the election. When examination is made of those offices which appear lower upon a ticket in a general election, it will often be found that elections are determined by a plurality of the votes, and it will frequently be found that the total vote for such lesser officers is much less than that for the more important offices in the election. It is probably true that the majorities of many state legislatures are majorities elected not by a majority of the total vote at a general election, and it is sometimes true that the majorities in state legislatures may represent a very distinct minority of the total popular vote.

In view of this fact there is much plausibility in the statement that a total affirmative vote of 35 per cent such as is required in Nebraska for the adoption of popular measures, represents fully as much of a popular expression as does the voting upon candidates for the legislature.

However this may be, it is true that if the initiative and referendum are to be adopted, to require a majority of the highest vote cast in a general election in order to carry measures submitted to popular vote is to make such an institution substantially unworkable. If the initiative and referendum are to be adopted and are to be employed as instruments of government some other basis is likely to be taken.

In this connection, reference should be made to the influence of the form of ballot upon popular voting on measures. A full discussion of this subject will be found in the pamphlet dealing with the subject of the amending article of the constitution. With a ballot such as that now used in Illinois, the requirement of a majority of those voting at a general election has the effect of counting in the negative all who do not vote on the question. However, it is possible to devise a ballot which will accomplish precisely the opposite result.

Emergency measures and the referendum: Most of the states which have the initiative and referendum make a distinction between emergency measures which shall not be subject to the referendum and other measures which shall be subject to the referendum upon petition. In a number of cases legislative measures which are to go into effect at once must be adopted by higher legislative majorities. The distinction between emergency and other measures is of course based upon the notion that other measures shall be suspended for a certain time after legislative passage to await a possible referendum petition. In

a few cases the plan has been adopted of discarding the distinction between emergency and other measures, thus permitting all measures to come into effect at once subject to a popular referendum which will operate as a repeal. Such a plan does away with two very serious difficulties under the plan which contemplates emergency measures:

(a) The declaration of emergencies in cases where no real emergency exists in order to avoid the referendum. In some states this of course would not avoid the referendum, but would lead almost necessarily to litigation as to whether the emergency actually exists.

(b) The filing of a referendum petition as a means of delaying the operation of a measure enacted by the legislature, with little or no notion that the measure would finally be rejected by the people.

Of course the plan of bringing all laws into operation at once, subject merely to a repeal by means of a referendum, would be open to some abuse in that the result sought by the measure might be accomplished before the possibility of such repeal. The plan here referred to, however, could be tied up with a plan for special elections in exceptional cases. There is a tendency to prohibit the use of the referendum upon regular appropriations, and it is with respect to regular appropriations that the lapse of time would in most cases involve the accomplishment of the purpose sought by the legislation.

Relation between the initiative and referendum and the regular legislature: The tables already given indicate perhaps with sufficient clearness that the initiative and referendum are not in any detailed way substitutes for the ordinary process of legislation, although several of the elections (separately analyzed) would seem to indicate that in certain instances this might be the case.

For example, in South Dakota between the years 1899 and 1917, two thousand five hundred and seventy-three laws were passed, whereas seventy-three acts and constitutional amendments were submitted to a popular vote, and of these fifty were proposed constitutional amendments, leaving but twenty-three as submissions of laws, and of the laws submitted but eight were adopted. For the state of Oregon between the years 1904 and 1919, two thousand six hundred and fifty-four laws were passed by the legislature. During the same period one hundred and seventy measures were submitted to a popular vote, of which eighty were proposed constitutional amendments, leaving but ninety proposed laws submitted to the people, of which thirty-five were adopted. However there have been some tendencies in the initiative and referendum toward provisions which will necessarily increase the number of measures to be submitted to the people. In a number of states there has been a tendency to provide that laws enacted by the initiative, and in some cases that laws submitted to and approved upon a referendum, shall be amended or repealed only upon the basis of a popular vote. Repeals or amendments of such laws would without such a provision normally be subject to a popular vote if the people were sufficiently interested to submit a referendum petition, and there

is a distinct disadvantage in making it necessary to submit such measures to the people. Provisions of the sort just referred to increase the compulsory referendum; that is, make a popular vote necessary in order to accomplish a certain purpose, and as has been suggested above, the compulsory referendum, as distinguished from the optional, is now responsible for the submission, not only of the greater number of measures, but also for the submission to the people of a great mass of immaterial detail for whose submission in a great number of cases there has been and would have been no popular demand.

In some states also there is a tendency toward making the use of the initiative easier than the use of the representative body. The constitutional provisions in Nebraska, Arkansas and Mississippi regarding the adoption of constitutional amendments make the passage and adoption of amendments by initiative petitions substantially easier than the adoption of such amendments upon the basis of legislative proposal. The necessary result of this will be to force the use of the initiative as distinguished from the ordinary legislative process. The Nevada constitutional provision previously referred to is one which may be construed as requiring a popular vote to amend or repeal any act of the legislature which has been approved upon a popular referendum, and if so construed would be a distinct means of giving preference to a compulsory popular vote upon measures as distinct from the ordinary legislative procedure.

Relation between the initiative and referendum and the constitution: As has already been suggested, the initiative and referendum provisions of Oregon, Nevada, Missouri, Arkansas, Colorado and Mississippi permit the proposal and adoption of constitutional amendments through the initiative and referendum by precisely the same methods as are employed with respect to the proposal and adoption of ordinary laws. The California constitutional provisions for the initiative and referendum make substantially no difference between the proposal and adoption of constitutional amendments and of ordinary legislation, and little difference is made by the constitution of Michigan. This means that in their formal aspects of proposal and adoption constitutional amendments are in these states placed upon the same basis as ordinary legislation. Not only this, but the requirement in a number of states that amendments or repeals of laws approved by the people be enacted only upon a popular vote places the amendment and repeal of such legislation upon substantially the same basis, establishing a compulsory referendum for such amendments and repeals in the same manner as for constitutional amendments.

Of course, the constitutional referendum already existed before the adoption of the initiative and referendum for ordinary legislation, but it is possible, as has been done in a number of states, in adopting the initiative and referendum, to continue some formal distinction between statutes and constitutional changes.

Votes under a compulsory referendum have steadily tended to increase in this country, even before the adoption of the initiative and referendum, and this increase in compulsory referenda, (that is, in the measures which must be submitted to the people if changes are to be made) has taken place primarily as a result of the increased detail in state constitutions.

The briefer and less detailed a constitution is, the less frequently will amendments be needed and the more important in fact such amendments are likely to be, although of course even a brief constitution will necessarily contain some matters requiring change and such a constitution should not be unduly difficult to amend.

The placing of numerous details in a constitution has also a direct bearing upon the use of the initiative and referendum if these institutions are to be adopted. If details as to a matter are placed in the constitution and there comes a popular demand for legislation in conflict with these details, two steps must be taken in order to obtain such legislation:

(1) If an initiative for constitutional change exists, or if the legislature is convinced that there should be constitutional change, a proposed amendment must first be submitted to the people and adopted.

(2) The way is then, and only then, open for legislative action or for the use of the initiative to propose legislation. That is, putting the detail in the constitution will multiply by two the measures which must be submitted to a popular vote, and will hamper the use of the initiative by forcing two separate steps to accomplish the purpose desired, as distinguished from one if details as to the matter are not included in the text of the constitution.

Limitation of measures to be submitted to popular vote: It has already been suggested that if the initiative and referendum are to be adopted, a limitation as to subject matter not to be dealt with by such institutions is likely to prove undesirable. At the same time it is highly desirable that questions to be submitted to the people either as constitutional amendments or as laws, should be only those of real importance, and that the number of such submissions should not be so numerous as to make effective popular action difficult if not impossible.

The tendency to increase compulsory referenda has already been commented upon, and this tendency results both from increasing detail in constitutions, and from the requirement of popular votes with respect to the amendment or repeal of measures approved by the people.

It is possible to reduce or limit the number of measures to be submitted to a popular vote, if the initiative and referendum are to be adopted. Such a limitation can be accomplished to a large extent in the following ways:

(a) Reduce to as great an extent as possible compulsory referenda upon constitutional questions, by reducing the detail in constitutions.

(b) Do not provide for a compulsory referendum upon the amendment or repeal of measures once approved by a popular vote, but merely permit legislative amendment or repeal subject, as in other cases, to a referendum upon popular demand.

(c) Do away with the cases in which constitutions now provide for compulsory referenda upon laws, where such compulsory referenda have ceased to be of any real value, leaving laws in such cases to an optional referendum upon popular petition. This statement would apply to the matter of banking legislation in this state.

(d) Under initiative and referendum provisions, do not permit the legislature to refer measures of its own motion. Such a reference permits the legislature to shift responsibility, and under an initiative and referendum provision, if there should be a popular demand for submission, this can be had by a popular petition without the need for submission by the legislature itself. However, legislative power to submit measures has not been freely exercised in the states where it exists.

(e) A large amount of popular voting could probably be avoided by an indirect initiative with a possibility of legislative deliberation and action before a measure shall be submitted to the people. In such cases it is probable that the legislative action would oftentimes at least meet popular approval without the need for further popular action.

Comments upon initiative and referendum provisions in the constitutions: There has been a tendency toward greater detail in the constitutional provisions for the initiative and the referendum. The Massachusetts constitutional amendment adopted in 1918 is a striking example of this, and it seems probable that a number of judicial decisions will be necessary before all points regarding the working of this amendment are clear. Constitutional provisions like those of Oregon (1902, 1906), and of North Dakota (1918) leave the detail to be worked out by legislation, and appear to be more satisfactory than does the method of trying to put all of the detail into the constitution itself.

In Utah and Idaho the constitutional provisions merely authorize legislation to provide for the initiative and the referendum. Constitutional provisions of this character would pretty clearly not meet the desires of those favoring the initiative and referendum, and these persons can as an argument point to the fact that the Utah amendment was adopted in 1900, but was not made effective by legislation until 1917, while the Idaho amendment adopted in 1912 has not yet been put into operation by legislative action.

The constitutional amendments regarded as most typical of the different types of the initiative and referendum are printed in an

appendix to this pamphlet. These amendments are those of Utah, Oregon, North Dakota, Nebraska, Michigan, Ohio and Massachusetts.

The Wisconsin proposed amendment which was rejected in 1914 is also given in the appendix, together with the final form in which a proposed Illinois amendment was voted upon by the House of Representatives in 1913. A possible combination may be made of elements from the Wisconsin and Illinois proposals, and a tentative draft of such a combination is also presented in the appendix. The presentation of this draft implies no view in favor of or against it or with respect to the initiative and referendum in general, but the draft is submitted merely in order that the various phases of the subject may be put in concrete form. If the adoption of the indirect initiative is to be considered, the Wisconsin plan has advantages over that of Ohio. There is no difficulty whatever about obtaining the introduction of a bill in the general assembly, and to require a petition for this purpose seems unnecessary, although a popular petition in such a case does accomplish the purpose of establishing a different status for a bill so presented, and the two methods of introduction into the general assembly could be adopted if this were desired.

VIII. RECALL OF JUDICIAL DECISIONS.

Colorado is the only state which has adopted a recall of judicial decisions, and since 1912 there seems to have been relatively little popular interest in such a proposal. In fact, the recall of judicial decisions as adopted in Colorado does nothing which cannot be accomplished by a relatively simple amending clause, and it is probably for this reason that little use has been found for such a provision. In view of this fact it is unnecessary to do more than to call attention to the existence of the Colorado provision and to the fact that it has not been used since its adoption.

The recall of judicial decisions is, as provided for in Colorado, merely an adaptation of the referendum, the people by a petition requiring a popular vote upon a law found unconstitutional by the supreme court, and the law upon a favorable popular vote standing independently of the judicial decision. Substantially what the popular vote does is to create an exception from the constitution as interpreted by the supreme court with respect to the particular law voted upon, and to this extent amending the constitution.

Numerous cases have occurred and will probably continue to occur in which the constitution as construed by the highest state court does not meet the popular needs and in which a constitutional amendment is proposed and adopted with respect to such a matter. Amending the constitution has an advantage over the recall of judicial decisions in that it deals not merely with the specific law in dispute, but with the principle underlying the legislation; and also in that it makes a specific change in the terms of the constitution itself. If a recall of judicial decisions were employed, it would be difficult for a court to know to what extent if any it was intended to lay down a rule for the future, or for a law upon the same subject different in text or in policy. In the table dealing with the recall upon page 120 will be found an outline of the Colorado provision for the recall of judicial decisions.

IX. RECALL OF OFFICERS.

The recall of public officers was adopted by Oregon in 1908, but first became an issue of distinct popular interest when it was placed in the proposed Arizona constitution. Congress required that the provision for the recall of officers in the Arizona constitution be amended by the exclusion of judges before that state should be admitted into the Union and such an amendment was made. Immediately after admission, however, the provision with respect to the recall of judges was again placed in the constitution of Arizona.

The table given below indicates the development of the recall and the extent to which it has been applied to judicial offices. Application to judicial offices has been the primary point of contention in connection with the development of the recall. The recall was rejected in Wisconsin and Minnesota in 1914. In Arkansas a recall amendment was adopted by popular vote in 1912, but was declared invalid by the supreme court of that state on the ground that the number of constitutional amendments submitted exceeded that permitted by the constitution.

Recall.

State.	Date.	To whom applicable.	Petition.
Oregon.	1908.	"Every public officer".	25%.
California.	1911.	"Every elective public officer."	12%. 5 counties for state officer; 20% for lo- cal officer.
Arizona.	1911, 1912.	Public officers holding elective of- fice.	25%.
Colorado.	1912.	"Recall of judicial decisions".	5%.
Colorado.	1912.	Elective officers.	25%.
Idaho.	1912 directory.	Not to apply to judicial officers.	No law yet en- acted.
Nevada.	1912.	Every public officer.	25%.
Washington	1912.	Except judges.	25% and 35%.
Michigan.	1913.	Except judges.	25%.
Kansas.	1914.	Every public officer holding either by election or appointment.	10%. 15%. 25%.
Louisiana.	1914.	Except. judges.	25%

In an appendix to this pamphlet is printed the text of the California constitutional provision with respect to the recall. These provisions illustrate perhaps sufficiently the constitutional provisions with respect to the recall, although the California provision is somewhat more carefully safeguarded than are the provisions of Oregon, Arizona and some other states.

The recall of public officers has been used in a number of cases with respect to local officers. A review of the cases in which it has been employed in the state of Oregon will be found in Barnett's *Initiative, Referendum and Recall in Oregon*.

The recall has been introduced by statute in a number of states, particularly in connection with the commission form of city government. A detailed analysis of the cases in which the recall has been introduced and in which it has been used will be found in the October, 1916, number of *Equity*.

Equity is a quarterly magazine (recently discontinued), devoted primarily to the initiative, referendum and recall. On the basis of a careful survey of the working of the recall this journal in 1916 made the following comment:

"In these reports to *Equity* there are more often complaints about the operation of the recall than about the initiative and referendum. Almost invariably the complaints refer to the efforts of a defeated political group to make trouble for a successful candidate where the rule requires the incumbent's name on the ballot with rival candidates, instead of having the recall proposition placed on the ballot by itself, to be voted on "yes" or "no". In the latter plan the names of the candidates appear on the ballot of the Recall proposition and, of course, the incumbent's name does not appear among them, as his name is involved only in the recall proposition. The result of the voting on candidates is considered only in the event that a majority is found to be for the recall of the incumbent, thus creating a vacancy in the office. The object of thus having the recall proposition on the same ballot with candidates is to obviate the expense and delay of holding a separate election.

"The action of a defeated minority is not invariably due to petty or corrupt motives. Without doubt there is justification in most instances for such persistent activity of a minority, especially if it believes itself to have been defeated by corrupt means. However, it is highly prejudicial to the proper function and purpose of the recall to have available any such plan as will enable a defeated group to force a new election on the basis of rival candidates without an opportunity to vote on the merits of the incumbent's administration.

"In thirteen states the municipal recall plan of operation is to have the name of the incumbent official, whose recall is sought, placed on the recall ballot along with the other candidates nominated, and the one receiving the highest vote to be declared elected. This plan is not in any true sense a recall election, for the question of recalling the incumbent official is not directly voted on at all. This is in effect a new election forced upon the community under the guise and subterfuge of a recall election. We cannot too emphatically condemn

this misnamed recall process, which has gained acceptance in a majority of the states authorizing the recall. We believe that in most cases this plan has been adopted unwittingly by men who did not duly consider what they were doing, but who merely copied the process which had found lodgment in the law of some other state or city.

"This situation is not possible in a city whose charter provides for the submission of a recall proposition separate and distinct from the process for obtaining a successor to the incumbent official in case he is recalled. This plan is required in the laws of four states (Colorado, Mississippi, Missouri and Ohio), and is common to special home rule charters in California and several other states. In some cities the successor, in case the recall carries, is appointed by the governor of the state. But generally a special election is held to elect a successor. In several states the plan is to have the candidates (but not the incumbent official) on the same ballot with the recall proposition, the one getting the highest vote, to be the successor only in the event that a majority favors the recall.

"A large number of charters and some state laws make a newly-elected official immune from the recall for a definite period, in some cases six months and in a few instances as long as a year. It may be mentioned here that in many charters a penalty is imposed upon any recalled official by barring him from any public office for one or two years.

"To Oregon, which created the first successful system of the state-wide initiative, referendum and recall, belongs the responsibility for having first introduced this perverted recall election process, in which the name of the incumbent official appears on the ballot as a candidate for re-election. Hence this plan is often spoken of as the 'Oregon plan'. The correct and efficient plan of having the recall proposition submitted separately first gained its prominence in certain municipalities of California. Hence it is known as the 'California plan'".

APPENDIX No. 1.

Beard, C. A., and Schultz, B. E., Documents on the state-wide initiative, referendum and recall. Macmillan, New York, 1912. Contains substantially all important documents bearing upon the initiative and referendum to the year 1911. The introductory note is important.

Annals of the American Academy of Political and Social Science. Special issue of September, 1912, devoted to the initiative, referendum and recall. Some of the articles are of distinct value.

Lowell, A. L., Public Opinion and Popular Government., Longmans, New York, 1914. A large part of this work is devoted to the initiative and referendum. Appendices contain tables of votes on measures in Switzerland and in the United States.

Munro, W. B., Editor, The Initiative, Referendum and Recall, Appleton, New York, 1912. A collection of articles from different points of view.

Oberholtzer, E. P., the initiative, referendum and recall in America, Scribners, New York, 1911. An important work with supplementary chapters covering the period from 1900 to 1910. The supplementary chapters are much more hostile to the initiative and referendum than the original work.

Massachusetts constitutional convention, 1917, Bulletin No. 6, the initiative and referendum, Boston, 1917.

Gardner, C. O., working of the state-wide referendum in Illinois, American Political Science Review, Vol. 5, page 394 (August, 1911).

Massachusetts constitutional convention, 1917-18, debates, Vol. II, Initiative and Referendum.

Upon the initiative and referendum in Oregon a number of specific studies have been made. The most valuable of these are the following:

Barnett, J. D., the operation of the initiative, referendum and recall in Oregon, Macmillan, New York, 1915. The only careful study of the operation of the initiative and referendum and recall in a single state.

Montague, R. W., the Oregon system at work. The National Municipal Review, April, 1914.

Holman, F. V., the unfavorable results of direct legislation in Oregon, Chapter 11 of the "Initiative, Referendum and Recall," edited by W. B. Munro.

APPENDIX No. 2. TEXTS OF INITIATIVE AND REFERENDUM PROVISIONS.

1. Utah Constitutional Amendment (1900).

Article VI, Section 1. Power vested in Senate, House and People. The legislative power of the State shall be vested:

(1) In a Senate and House of Representatives, which shall be designated the Legislature of the State of Utah.

(2) In the people of the State of Utah as hereinafter stated:

The legal voters or such fractional part thereof of the State of Utah, as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the Legislature (except those laws passed by a two-thirds vote of the members elected to each house of the Legislature) to be submitted to the voters of the State before such law shall take effect.

The legal voters, or such fractional part thereof, as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law-making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect.

2. Oregon Constitutional Amendments ((1902, 1906).

Article IV, Section 1. Legislative Authority—Style of Bill—Initiative and Referendum. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be

ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the state of Oregon". This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

Sec. 1a. Initiative and Referendum on Local, Special, and Municipal Laws and Parts of Laws. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this constitution are hereby further reserved to the legal voters of every municipality and district, as to all local, special, and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town.

Oregon Statutes.

Section 3470. The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Oregon, or by a city council:

WARNING.

It is a felony for any one to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter.

PETITION FOR REFERENDUM.

To the honorable.....secretary of state for the state of Oregon (or to the honorable..... clerk, auditor, or recorder, as the case may be, of the city of.....).

We, the undersigned citizens and legal voters of the state of Oregon (and the district of....., county of....., or city of....., as the case may be), respectfully order that the senate (or house) bill No..... entitled (title act of, and if the petition is against less than the whole act then set forth here the part or parts on which the referendum is sought), passed by the..... legislative assembly of the state of Oregon at the regular (special) session of said legislative assembly, shall be referred to the people of the state (district of....., county of....., or city of....., as the case may be), for their approval or rejection, at the regular (special) election to be held on the..... day of..... A. D. 19.., and each for himself says: I have personally signed this petition; I am a legal voter of the state of Oregon, and (district of....., County of....., City of....., as the case may be); my residence and post office are correctly written after my name.

Name Residence
 Post Office
 (If in a city, street and number)

(Here follow twenty numbered lines for signatures) (1907).

Sec. 3471. The following shall be substantially the form of petition for any law, amendment to the constitution of the state of Oregon, city ordinance or amendment to a city charter proposed by the initiative:

WARNING.

It is a felony for any one to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a legal voter.

INITIATIVE PETITION.

To the honorable....., secretary of state for the state of Oregon (or to the honorable....., clerk, auditor or recorder, as the case may be, for the city of.....):

We, the undersigned citizens and legal voters of the state of Oregon (and of the district of....., county of....., or city of....., as the case may be), respectfully demand that the following proposed law (or amendment to the constitution, ordinance, or amendment to the city charter, as the case may

be), shall be submitted to the legal voters of the state of Oregon (district of....., county of....., or city of....., as the case may be), for their approval or rejection at the regular, general election, or (regular or special city election), to be held on the.....day of....., A. D. 19.., and each for himself says: I have personally signed this petition; I am a legal voter of the state of Oregon (and of the district of....., county of....., city of..... as the case may be); my residence and post-office are correctly written after my name.

Name Residence
 Post Office
 (If in a city, street and number)

(Here follow twenty numbered lines for signatures) (1907)

Sec. 3472. Before or at the time of beginning to circulate any petition for the referendum to the people on any act passed by the legislative assembly of the state of Oregon, or for any law, amendment to the constitution of the state of Oregon, city ordinance or amendment to a city charter, proposed by the initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the secretary of state, or city clerk, recorder or auditor, as the case may be, a copy of such petition duly signed which shall be filed by said officer in his office, who shall immediately examine the same and specify the form and kind and size of paper on which such petition shall be printed for circulation for signatures.

To every sheet of petitioners' signatures shall be attached a full and correct copy of the measure so proposed by initiative petition; but such petition may be filed by the secretary of state in numbered sections for convenience in handling. Each sheet of petitioners' signatures upon referendum petitions shall be attached to a full and correct copy of the measure on which the referendum is demanded and may be filed in numbered sections in like manner as initiative petitions. Not more than 20 signatures on one sheet shall be counted. When any such initiative or referendum petition shall be offered for filing the secretary of state shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions: provided, all petitions for the initiative and for the referendum and sheets for signatures shall be printed on a good quality of bond or ledger paper on pages 8½ inches in width by 13 inches in length, with a margin of 1¾ inches at the top of binding; if the aforesaid sheets shall be too bulky for convenient binding in one volume, they may be bound in two or more volumes, those in each volume to be attached to a single printed copy of such measure. If any such measure shall, at the ensuing election, be approved by the people, then the copies thereof so preserved, with the sheets and signatures and affidavits, and a certified copy of the Governor's proclamation declaring the same to have been approved by the people, shall be bound together in such form that they may be conveniently identi-

fied and preserved. The secretary of state shall cause every such measure so approved by the people to be printed with the general laws enacted by the next ensuing session of the legislative assembly, with the date of the governor's proclamation declaring the same to have been approved by the people. This act shall not apply to the general laws governing the method of determining whether stock of any kind shall be permitted to run at large in any county or portion thereof, nor to the provisions of the local option liquor laws providing methods of determining the sale of intoxicating liquors shall be prohibited in any county, city, precinct, ward or district. (As amended by Laws, 1913, ch. 359, Sec. 1).

Sec. 3473. Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof :

State of Oregon, }
County of.....} ss.

I, ..., being first duly sworn, say: That every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence; I believe that each has stated his or her name, postoffice address and residence correctly, and that each signer is a legal voter of the State of Oregon and county of.....
 (Signature and postoffice address of affiant.)

Subscribed and sworn to before me this.....day of.....,
A. D. 19....

(Signature and title of officer before whom oath is made and his postoffice address.)

In addition to said affidavit the county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with the signatures of the registration cards, books and blanks on file in his office, shall carefully examine said petition and shall attach to the sheets of said petition containing such signatures, his certificate to the Secretary of State, substantially as follows :

State of Oregon, }
County of..... } ss.

To the Honorable....., Secretary of State of the State of
Oregon:

I, ..., county clerk of the county of, hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition attached hereto, with the signatures of said electors as they appear on the registration cards, books and blanks in my office, and from such information as I have been able to obtain I believe that the signatures of (names of signers) numbering (number of genuine signatures) are genuine. As to the remainder of the signatures thereon, I believe they are not genuine,

except that the following names (.....), do not appear on the registration cards, books and blanks in my office.

(Signed) (County Clerk.)
(Seal of Office) (Deputy.)

Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the electors whose signatures are thus certified to be genuine, and the Secretary of State shall consider and count only such signatures on such petitions as shall be so certified by said county clerk to be genuine; provided, that the Secretary of State shall consider and count such of the remaining signatures as shall be proved to be the genuine signatures of legal voters. To establish such facts, the official certificate of a notary public of the county in which the signer resides shall be required as to the facts for each of such last named signatures.

State of Oregon, }
County of..... } ss.

I, ..., a duly qualified and acting notary public in and for the above named county and State, do hereby certify: That I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition and I know of my own knowledge that they are legal voters of the State of Oregon and of the county written after their several names in the annexed petition, and that their residence and postoffice address is correctly stated therein to-wit: (names of such electors).

In testimony whereof, I have hereunto set my hand and official seal this.....day of....., 19....
..... (Notary Public for Oregon)

The county clerk shall not retain in his possession any such petition or any part thereof for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall deliver the same to the person from whom he received it, with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors. (As amended by Laws, 1917, ch. 176, Sec. 1).

Sec. 3474. If the secretary of state shall refuse to accept and file any petition for the initiative or for the referendum any citizen may apply, within ten days after such refusal, to the circuit court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All

such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the supreme court within ten days after the decision is rendered. The circuit court of Marion county shall have jurisdiction in all cases of measures to be submitted to the electors of the state at large; in cases of local and special measures, the circuit court of the county, or of one of the counties in which such measures are to be voted upon, shall have jurisdiction; in cases of municipal legislation the circuit court of the county in which the city concerned is situated shall have jurisdiction (1907).

Sec. 3475. When a copy of the petition for any measure to be referred to the people of the State, or of any county or district composed of one or more counties, either by the initiative or the referendum, shall be filed with the Secretary of State, as provided in Section 3472, Lord's Oregon Laws as amended by Chapter 359, General Laws of Oregon of 1913, or when the submission to the people of any proposed constitutional amendment or measure shall be ordered by the Legislative Assembly, the Secretary of State shall forthwith transmit two copies thereof to the Attorney General of the State. Within ten days after receiving said copies the Attorney General shall provide a ballot title therefor and return it to the Secretary of State, together with the ballot title (for said measure) so prepared by him. A copy of the ballot title as prepared by the Attorney General shall be furnished by the Secretary of State with his approved form of any initiative or referendum petition, as provided in said Section 3472, Lord's Oregon Laws, as amended, to the person or persons or organization or organizations under whose authority the measure is initiated or referred. Said ballot title shall be used and printed on the covers of the petition when in circulation, the short title shall be printed in type not less than twenty points on the covers of all such petitions circulated for signatures. The ballot title shall contain: (1) The name or names of the person or persons, organization or organizations under whose authority the measure is to be initiated or referred. (2) A distinctive short title in not exceeding ten words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition. (3) A general title which may be distinct from the legislative title of the measure, expressing in not more than one hundred words the purpose of the measure. The ballot title shall be printed with the numbers of the measure on the official ballot. In making such ballot title the Attorney General shall to the best of his ability give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure. Any person who is dissatisfied with the ballot title or the short title provided by the Attorney General for any measure, may appeal from his decision to the circuit court as provided by Section 3474 by petition, praying for a different title and setting forth the reason why the title prepared by the Attorney General is insufficient or unfair. No appeal

shall be allowed from the decision of the Attorney General on a ballot title unless the same is taken within twenty days after said ballot title is filed in the office of the Secretary of State. A copy of every such ballot title shall be served by the Secretary of State or clerk of the court, upon the person offering or filing such initiative or referendum petition, or appeal. The service of such decision may be by mail or telegraph, and shall be made forthwith when it is received from the Attorney General by the Secretary of State. Said circuit court shall thereupon examine said measure, hear arguments, and in its decision thereon certify to the Secretary of State a ballot title and a short title for the measure in accord with the intent of this section. The decision of the circuit court shall be final. The Secretary of State shall print on the official ballot the titles thus certified to him. (As amended by Laws, 1917, Ch. 176, Sec. 2).

Sec. 3476. Designation and Numbering of Measures. The Secretary of State, at the time he furnishes to the county clerks of the several counties certified copies of the names of the candidates for state and district offices, shall furnish to each of said county clerks his certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided. Such ballot title shall not resemble, so far as to probably create confusion, any such title previously filed for any measure to be submitted at that election; he shall number such measures and such ballot titles shall be printed on the official ballot in the order in which acts referred by the legislative assembly and petitions by the people shall be filed in his office. The affirmative of the first measure shall be numbered 300 and the negative 301 in numerals, and the succeeding measures shall be numbered consecutively 302, 303, 304, 305, and so on, at each election. It shall be the duty of the several county clerks to print said ballot titles and numbers upon the official ballot in the order presented to them by the Secretary of State and the relative position required by law. Measures referred by the legislative assembly shall be designated by the heading "Referred to the People by the Legislative Assembly;" measures referred by petition shall be designated "Referendum Ordered by Petition of the People;" measures proposed by initiative petition shall be designated and distinguished on the ballot by the heading "Proposed by Initiative Petition."

The appropriate officer of each incorporated city or town of the state having more than 2,000 inhabitants at the last preceding United States census, at the time he furnishes to the county clerk of the county in which such incorporated city or town is situated certified copies of names of the candidates for city and town offices, shall furnish to said county clerk his certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided. Such ballot title shall not resemble, so far as to probably create confusion, any such title previously filed for any measure to be submitted at that election; he shall number

such measures and such ballot titles shall be printed on the official ballot. The affirmative of the first measure shall be numbered 500 and the negative 501 in numerals, and the succeeding measures shall be numbered consecutively 502, 503, 504, 505, and so on, at each election. It shall be the duty of the county clerk to print said ballot titles and numbers upon the official ballot in the order presented to them by the said city or town officer and the relative position required by law. (As amended by Laws, 1919, Ch. 283, Sec. 32.)

Sec. 3477. The manner of voting upon measures submitted to the people shall be the same as is now or may be required and provided by law; no measure shall be adopted unless it shall receive an affirmative majority of the total number of respective votes cast on such measures and entitled to be counted under the provisions of this act; that is to say, supposing seventy thousand ballots to be properly marked on any measure, it shall not be adopted unless it shall receive more than thirty-five thousand affirmative votes. If two or more conflicting laws shall be approved by the people at the same election, the law receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such law may not have received the greatest majority of affirmative votes. If two or more conflicting amendments to the constitution shall be approved by the people at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes (1907).

Sec. 3478. Not later than the 90th day before any regular general election, nor later than 30 days before any special election, at which any proposed law, part of an act or amendment to the constitution is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the title and text of each measure to be submitted, with the number and form in which the ballot title thereof will be printed on the official ballot. The person, committee or duly organized officers of any organization filing any petition for the initiative, but no other person or organization, shall have the right to file with the secretary of state for printing and distribution any argument advocating such measure, said argument shall be filed not later than the 115th day before the regular election at which the measure is to be voted upon. Any person, committee or organization may file with the secretary of state, for printing and distribution, any arguments they may desire, opposing any measure, not later than the 105th day immediately preceding such election. Arguments advocating or opposing any measure referred to the people by the legislative assembly, or by referendum petition, at a regular general election, shall be governed by the same rules as to time, but may be filed with the secretary of state by any person, committee or organization; in the case of measures submitted at a special election, all arguments in support of such measure at least 60 days before such election. But in every case the person or persons offering such arguments for printing and

distribution shall pay to the secretary of state sufficient money to pay all the expenses for paper and printing to supply one copy with every copy of the measure to be printed by the State; and he shall forthwith notify the persons offering the same of the amount of money necessary. The secretary of state shall cause one copy of each of said arguments to be bound in the pamphlet copy of the measures to be submitted as herein provided, and all such measures and arguments to be submitted at one election shall be bound together in a single pamphlet. All the printing shall be done by the state, and the pages of said pamphlet shall be numbered consecutively from one to the end. The pages of said pamphlet shall be six by nine inches in size and the printed matter therein shall be set in six-point Roman-faced solid type on not to exceed seven-point body, in two columns of 13 ems in width each to the page with six-point dividing rule and with appropriate heads and printed on a good quality of book paper 25 by 38 inches weighing not more than 50 pounds to the ream. The title page of every measure bound in said pamphlet shall show its ballot title and ballot number. The title page of each argument shall show the measure or measures it favors or opposes and by what persons or organization it is issued. When such arguments are printed he shall pay the state printer therefor from the money deposited with him and refund the surplus, if any, to the parties who paid it to him. The cost of printing, binding and distributing the measures proposed and of binding and distributing the arguments, shall be paid by the state as a part of the state printing, it being intended that only the cost of paper and printing the arguments shall be paid by the parties presenting the same, and they shall not be charged any higher rate for such work than is paid by the state for similar work and paper. Not later than the 55th day before the regular general election at which such measures are to be voted upon the secretary of state shall transmit by mail, with postage fully prepaid, to every voter in the state whose address he may have, one copy of such pamphlet; provided, that if the secretary shall, at or about the same time be mailing any other pamphlet to every voter, he may, if practicable, bind the matter herein provided for in the first part of said pamphlet, numbering the pages of the entire pamphlet consecutively from one to the end, or he may enclose the pamphlets under one cover. In the case of a special election he shall mail said pamphlet to every voter not less than 20 days before said special election. (As amended by Laws, 1913; ch. 359, Sec. 4).

Sec. 3483. Every person who is a qualified elector of the state of Oregon may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person willfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding \$500, or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment, in

the discretion of the court before which such conviction shall be had (1907).

Sec. 3497. Any person not a candidate for any office or nomination who expends money or value to an amount greater than \$50 in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall within ten days after the election in which said money or value was expended, file with the secretary of state in the case of a measure voted upon by the people an itemized statement of such receipts and expenditures and vouchers for every sum paid in excess of \$5. . . . (1908).

Sec. 3515. Any person shall be guilty of a corrupt practice within the meaning of this act if he expends any money for election purposes contrary to the provisions of any statute of this state, or if he is guilty of treating, undue influence, personation, the giving or promising to give, or offer of any money or valuable thing to any elector with intent to induce such elector to vote or to refrain from voting for any candidate for public office, or the ticket of any political party or organization, or any measure submitted to the people, at any election, or to register or refrain from registering as a voter at any state, district, county, city, town, village, or school district election for public offices or on public measures. Such corrupt practice shall be deemed to be prevalent when instances thereof occur in different election districts similar in character and sufficient in number to convince the court before which any case involving the same may be tried that they were general and common or were pursuant to a general scheme or plan (1908).

Sec. 3517. No publisher of a newspaper or other periodical shall insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure, or defeat any candidate or political party or organization, or measure before the people, unless it is stated therein that it is a paid advertisement, the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street and number thereof, if any, appear in such advertisement in the nature of a signature Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice (1908).

Sec. 3518. It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, or the candidates or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof he shall be punished by a fine of not less than \$5 nor more than \$100 for the first offense, and for the second and each subsequent offense occurring on the same or different election days, he shall be punished by fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment (1908).

Sec. 3519. It shall be unlawful to write, print, or circulate through the mails or otherwise any letter, circular, bill, placard, or poster relating to any election or to any candidate at any election, unless the same shall bear on its face the name and address of the author, and of the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, or causing to be written, printed, circulated, posted, or published any such letter, bill, placard, circular or poster as aforesaid, which fails to bear on its face the name and address of the author and of the printer or publisher shall be guilty of an illegal practice, and shall, on conviction thereof, be punished by fine of not less than \$10 nor more than \$1,000 (1908).

3. Ohio Constitutional Amendment (1912).

Article II, Section 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws. (Adopted Sept. 3, 1912).

Sec. 1a. The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof; "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors". (Adopted Sept. 3, 1912).

Sec. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general

assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly". Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor. (Adopted Sept. 3, 1912).

Sec. 1c. The second aforesated power reserved by the people is designated the referendum, and the signatures of six per centum of the electors shall be required upon a petition to order the submission to the electors of the state for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general

assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect. (Adopted Sept. 3, 1912).

Sec. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum. (Adopted Sept. 3, 1912).

Sec. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements therein or to personal property. (Adopted Sept. 3, 1912.)

Sec. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law. (Adopted Sept. 3, 1912).

Sec. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street

and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of the signers of such part of such petition and shall state that each of the signatures attached to such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations for and against the same to each of the electors of the state, as far as may be reasonably

possible. Unless otherwise provided by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law, or proposed amendment to the constitution, to be submitted. He also shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provision or the powers herein reserved. (Adopted Sept. 3, 1912.)

4. Michigan Constitutional Amendment (1913).

Article V, Section 1. The legislative power of the state of Michigan is vested in a senate and house of representatives; but the people reserve to themselves the power to propose legislative measures, resolutions and laws; to enact or reject the same at the polls independently of the legislature; and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. The first power reserved by the people is the initiative. At least eight per cent of the legal voters of the state shall be required to propose any measure by petition: Provided, that no law shall be enacted by the initiative that could not under this constitution be enacted by the legislature. Initiative petitions shall set forth in full the proposed measure, and shall be filed with the secretary of state not less than ten days before the commencement of any session of the legislature. Every petition shall be certified to as herein provided, as having been signed by qualified electors of the state equal in number to eight per cent of the total vote cast for all candidates for governor at the last preceding general election, at which a governor was elected. Upon receipt of any initiative petition, the secretary of state shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified electors, and if the same has been so signed, the secretary of state shall transmit such petition to the legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected by the legislature without change or amendment within forty days from the time such petition is received by the legislature.

If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon

it by the legislature within said forty days, the secretary of state shall submit such proposed law to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by the secretary of state to the electors for approval or rejection at the next ensuing general election. All said initiative petitions last above described shall have printed thereon in twelve point black face type the following: "Initiative measure to be presented to the legislature."

The second power reserved to the people is the referendum. No act passed by the legislature shall go into effect until ninety days after the final adjournment of the session of the legislature which passed such act, except such acts making appropriations and such acts immediately necessary for the preservation of public peace, health or safety, as have been given immediate effect by action of the legislature.

Upon presentation to the secretary of state within ninety days after the final adjournment of the legislature, of a petition certified to as herein provided, as having been signed by qualified electors equal in number to five per cent of the total vote cast for all candidates for governor at the last election at which a governor was elected, asking that any act, section or part of any act of the legislature, be submitted to the electors for approval or rejection, the secretary of state, after canvassing such petition as above required, and the same is found to be signed by the requisite number of electors, shall submit to the electors for approval or rejection such act or section or part of any act at the next succeeding general election; and no such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon.

Any act submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect ten days after the date of the official declaration of the vote by the secretary of state. No act initiated or adopted by the people, shall be subject to the veto power of the governor, and no act adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in said initiative measure, but the legislature may propose such amendments, alterations or repeals to the people. Acts adopted by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof: Provided, however, If two or more measures approved by the electors at the same election conflict, the measure receiving the highest affirmative vote shall prevail. The text of all measures to be submitted shall be published as constitutional amendments are required by law to be published.

Any initiative or referendum petition may be presented in sections, each section containing a full and correct copy of the title and text of the proposed measure. Each signer thereto shall add to his signature, his place of residence, street and number in cities having street numbers, and his election precinct. Any qualified elector of

the state shall be competent to solicit such signatures within the county in which he is an elector. Each section of the petition shall bear the name of the county or city in which it is circulated, and only qualified electors of such county or city shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence, that each signature to the section is the genuine signature of the person signing the same, and no other affidavit thereto shall be required. Such petitions so verified shall be *prima facie* evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors.

Each section of the petition shall be filed with the clerk of the county in which it was circulated, but all said sections circulated in any county shall be filed at the same time. Within twenty days after the filing of such petition in his office, the said clerk shall forward said petition to the secretary of state. Within forty days from the transmission of the said petition to the secretary of state, a supplemental petition identical with the original as to the body of the petition but containing supplemental names, may be filed with the county clerk, and such supplemental petition shall be forwarded to the secretary of state by said clerk within ten days after the filing of the same.

Sec. 38. Any bill passed by the legislature and approved by the governor, except appropriation bills, may be referred by the legislature to the qualified electors; and no bill so referred shall become a law unless approved by a majority of the electors voting thereon.

Article XVII, Section 2. Amendment may also be proposed to this constitution by petition of the qualified voters of this state. Every such petition shall include the full text of the amendment so proposed and be signed by not less than ten per cent of the legal voters of the state. Initiative petitions proposing an amendment to this constitution shall be filed with the secretary of state at least four months before the election at which such proposed amendment is to be voted upon. Upon receipt of such petition by the secretary of state, he shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified electors, and if the same has been so signed, the proposed amendment shall be submitted to the electors at the next regular election at which any state officer is to be elected. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by a majority of the electors voting thereon and not otherwise. Every amendment shall take effect thirty days after the election at which it is approved. The total number of votes cast for governor at the regular election last preceding the filing of any petition proposing an amendment to the constitution, shall be the basis upon which the number of legal voters necessary to sign such a petition shall be computed. The secretary of state shall submit all proposed amendments to the constitution initiated by the people for adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and having

printed or written at the top thereof such heading as shall be designated or prescribed by the secretary of state. Such petition shall be signed by qualified voters in person only, with the residence address of such persons and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached the affidavit of the elector circulating the same, stating that each signature thereto is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified elector. Such petition so verified shall be *prima facie* evidence that the signatures thereon are genuine, and that the persons signing the same are qualified electors. The text of all amendments to be submitted shall be published as constitutional amendments are now required to be published.

5. Nebraska Constitutional Amendment (1912).

Article III, Section 1. (Legislative authority). The legislative authority of the state shall be vested in a legislature consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws, and amendments to the constitution, and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, item, section, or part of any act passed by the legislature.

Sec. 1a. (Initiative). The first power reserved by the people is the initiative. Ten per cent of the legal voters of the state, so distributed as to include five per cent of the legal voters in each of two-fifths of the counties of the state, may propose any measure by petition, which shall contain the full text of the measure so proposed. Provided, that proposed Constitutional Amendments shall require a petition of fifteen per cent of the legal voters of the state distributed as above provided. Initiative petitions (except for municipal and wholly local legislation) shall be filed with the Secretary of State and be by him submitted to the voters at the first regular state election held not less than four months after such filing. The same measure, either in form or in essential substance, shall not be submitted to the people by initiative petition (either affirmatively or negatively) oftener than once in three years. If conflicting measures submitted to the people at the same election shall be approved the one receiving the highest number of affirmative votes shall thereby become law as to all conflicting provisions. The Constitutional limitations as to scope and subject matter of statutes enacted by the legislature shall apply to those enacted by the initiative.

Sec. 1b. (Referendum.) The second power reserved is the referendum. It may be ordered by a petition of ten per cent of the legal voters of the state distributed as required for initiative petitions. Referendum petitions against measures passed by the legislature shall be filed with the Secretary of State within ninety days after the

legislature enacting the same adjourns sine die, or for a period longer than ninety days; and elections thereon shall be had at the first regular state election held not less than thirty days after such filing.

Sec. 1c. (Referendum—Suspension of measures). The referendum may be ordered upon any act except acts making appropriations for the expenses of the state government, and state institutions existing at the time such act is passed. When the referendum is ordered upon an act or any part thereof it shall suspend its operation until the same is approved by the voters; provided, that emergency acts, or acts for the immediate preservation of the public peace, health, or safety shall continue in effect until rejected by the voters or repealed by the legislature. Filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of the measure from becoming operative.

Sec. 1d. (Effect of act; ballots necessary; veto; returns of election). Nothing in this section shall be construed to deprive any member of the legislature of the right to introduce any measure. The whole number of votes cast for governor at the regular election last preceding the filing of any initiative or referendum petition shall be the basis on which the number of legal voters required to sign such petition shall be computed. The veto power of the governor shall not extend to measures initiated by or referred to the people. All such measures shall become the law or a part of the constitution when approved by a majority of the votes cast thereon, provided, the votes cast in favor of said initiative measure or part of said Constitution shall constitute thirty-five per cent (35%) of the total vote cast at said election, and not otherwise, and shall take effect upon proclamation by the governor, which shall be made within ten days of the completion of the official canvass. The vote upon initiative and referendum measures shall be returned and canvassed in the same manner as is prescribed in the case of presidential electors. The method of submitting and adopting amendments to the constitution provided by this section shall be supplementary to the method prescribed in the article of this constitution, entitled "Amendments" and the latter shall in no case be construed to conflict herewith. This amendment shall be self-executing, but legislation may be enacted especially to facilitate its operation. In submitting petitions and orders for the initiative and the referendum, the Secretary of State and all other officers shall be guided by this amendment and the general laws until additional legislation shall be especially provided therefor; all propositions submitted in pursuance hereof shall be submitted in a non-partisan manner and without any indication or suggestion on the ballot that they have been approved or endorsed by any political party or organization, and provided further that only the title of measures shall be printed on the ballot and, when two or more measures have the same title they shall be numbered consecutively in the order of filing with the Secretary of State and including the name of the first petitioner.

Sec. 10. (Bill style, final passage). The style of all bills shall be "Be it enacted by the people of the State of Nebraska", and no

law shall be enacted except by bill. No bill shall be passed by the legislature unless by assent of a majority of all the members elected to each house of the legislature and the question upon final passage shall be taken immediately upon its last reading and the yeas and nays shall be entered upon the journal.

6. Massachusetts Constitutional Amendment (1918).

ARTICLE XLVIII. I. DEFINITION.

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

THE INITIATIVE. II. INITIATIVE PETITIONS.

Section 1. Contents.—An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Sec. 2. Excluded Matters.—No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

Sec. 3. Mode of Originating.—Such petition shall first be signed by ten qualified voters of the commonwealth and shall then be submitted to the attorney-general, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

Sec. 4. Transmission to the General Court.—If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. LEGISLATIVE ACTION. GENERAL PROVISIONS.

Sec. 1. Reference to Committee.—If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

Sec. 2. Legislative Substitutes.—The general court may, by resolution passed by ye and nay vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. LEGISLATIVE ACTION ON PROPOSED CONSTITUTIONAL AMENDMENTS.

Section 1. Definition.—A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced

by a member of either house shall be designated a legislative substitute or a legislative amendment.

Sec. 2. Joint Session.—If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.

Sec. 3. Amendment of Proposed Amendments.—A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

Sec. 4. Legislative Action.—Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

Sec. 5. Submission to the People.—If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of at least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

V. LEGISLATIVE ACTION ON PROPOSED LAWS.

Section 1. Legislative Procedure.—If an initiative petition for a law is introduced into the general court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both houses before the first Wednesday of June upon the enact-

ment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.

Sec. 2. Amendment by Petitioners.—If the general court fails to pass a proposed law before the first Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney-general filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the following July, together with a certificate signed by the attorney-general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.

VI. CONFLICTING AND ALTERNATIVE MEASURES.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The general court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: provided, that a proposed constitutional amendment and a proposed law shall not be so grouped,

and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

THE REFERENDUM. I. WHEN STATUTES SHALL TAKE EFFECT.

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. EMERGENCY MEASURES.

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each house voting thereon, the law shall not be an emergency law; but if the governor, at any time before the election at which it is to be submitted to the people on referendum, files with the secretary of the commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law.

III. REFERENDUM PETITIONS.

Section 1. Contents.—A referendum petition may ask for a referendum to the people upon any law enacted by the general court which is not herein expressly excluded.

Sec. 2. Excluded Matters.—No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Sec. 3. Mode of Petitioning for the Suspension of a Law and a Referendum thereon.—A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the

secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than fifteen thousand qualified voters of the commonwealth, then the operation of such law shall be suspended, and the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.

Sec. 4. Petitions for Referendum on an Emergency Law or a Law the Suspension of which is not asked for.—A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the commonwealth, and shall then be filed with the secretary of the commonwealth not later than thirty days after the law which is the subject of the petition has become law. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than ten thousand qualified voters of the commonwealth protesting against such law and asking for a referendum thereon, then the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election. If thirty days do not so intervene, then it shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved

if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.

GENERAL PROVISIONS. I. IDENTIFICATION AND CERTIFICATION OF SIGNATURES.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for state offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. LIMITATION ON SIGNATURES.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. FORM OF BALLOT.

Each proposed amendment to the constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the attorney-general, subject to such provision as may be made by law, and the secretary of the commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:

In the case of an amendment to the constitution:
Shall an amendment to the constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

Yes.	
------	--

No.	
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In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

Yes.	
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No.	
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IV. INFORMATION FOR VOTERS.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law,

cause to be prepared and sent to the voters other information and arguments for and against the measure.

V. THE VETO POWER OF THE GOVERNOR.

The veto power of the governor shall not extend to measures approved by the people.

VI. THE GENERAL COURT'S POWER OF REPEAL.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VII. AMENDMENT DECLARED TO BE SELF-EXECUTING.

This article of amendment to the constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

7. North Dakota Constitutional Amendment (1918).

Article II, Sec. 25. The legislative power of this state shall be vested in a legislature consisting of a senate and a house of representatives. The people, however, reserve the power, first, to propose measures and to enact or reject the same at the polls; second, to approve or reject at the polls any measure or any item, section, part or parts of any measure enacted by the legislature.

The first power reserved is the initiative. Ten thousand electors at large may propose any measure by initiative petition. Every such petition shall contain the full text of the measure and shall be filed with the secretary of state not less than ninety days before the election at which it is to be voted upon.

The second power reserved is the referendum. Seven thousand electors at large may, by referendum petition, suspend the operation of any measure enacted by the legislature, except an emergency measure. But the filing of a referendum petition against one or more items, sections or parts of any measure, shall not prevent the remainder from going into effect. Such petition shall be filed with the secretary of state not later than ninety days after the adjournment of the session of the legislature at which such measure was enacted.

Each measure initiated by or referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the secretary of state and shall be voted upon at any state-wide election designated in the petition, or at a special election called by the governor. The result of the vote upon any measure shall be canvassed and declared by the board of canvassers.

Any measure, except an emergency measure, submitted to the electors of the state, shall become a law when approved by a majority of the votes cast thereon. And such law shall go into effect on the 30th day after the election, unless otherwise specified in the measure.

If a referendum petition is filed against an emergency measure, such measure shall be a law until voted upon by the electors. And if

it is then rejected by a majority of the votes cast thereon, it shall be thereby repealed. Any such measure shall be submitted to the electors at a special election if so ordered by the governor, or if the referendum petition filed against it shall be signed by thirty thousand electors at large. Such special election shall be called by the governor, and shall be held not less than one hundred nor more than one hundred thirty days after the adjournment of the session of the legislature.

The secretary of state shall pass upon each petition, and if he finds it insufficient, he shall notify the "Committee for the Petitioners" and allow twenty days for correction or amendment. All decisions of the secretary of state in regard to any such petition shall be subject to review by the supreme court. But if the sufficiency of such petition is being reviewed at the time the ballot is prepared, the secretary of state shall place the measure on the ballot and no subsequent decision shall invalidate such measure if it is at such election approved by a majority of the votes cast thereon. If proceedings are brought against any petition upon any ground, the burden of proof shall be upon the party attacking it.

No law shall be enacted limiting the number of copies of a petition which may be circulated. Such copies shall become part of the original petition when filed or attached thereto. Nor shall any law be enacted prohibiting any person from giving or receiving compensation for circulating the petitions, nor in any manner interfering with the freedom in securing signatures to petitions.

Each petition shall have printed thereon a ballot title, which shall fairly represent the subject matter of the measure, and the names of at least five electors who shall constitute the "committee for the petitioners" and who shall represent and act for the petitioners.

All measures submitted to the electors shall be published by the state as follows: "The secretary of state shall cause to be printed and mailed to each elector a publicity pamphlet, containing a copy of each measure together with its ballot title, to be submitted at any election. Any citizen, or the officers of any organization, may submit to the secretary of state, for publication in such pamphlet, arguments concerning any measure therein, upon first subscribing their names and addresses thereto and paying the fee therefor, which, until otherwise fixed by the legislature, shall be the sum of two hundred dollars per page".

The enacting clause of all measures initiated by the electors, shall be: "Be it enacted by the people of the State of North Dakota." In submitting measures to the electors, the secretary of state and all other officials shall be guided by the election laws until additional legislation shall be provided.

If conflicting measures initiated by or referred to the electors shall be approved by a majority of the votes cast thereon, the one receiving the highest number of affirmative votes shall become the law.

The word "measure" as used herein, shall include any law or amendment thereto, resolution, legislative proposal or enactment of any character.

The veto power of the governor shall not extend to the measures initiated by or referred to the electors. No measure enacted or approved by a vote of the electors shall be repealed or amended by the legislature, except upon a ye and nay vote upon roll call of two-thirds of all the members elected to each house.

This section shall be self executing and all of its provisions shall be treated as mandatory. Laws may be enacted to facilitate its operation, but no laws shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people.

Article II, Section 67. No act of the legislative assembly shall take effect until July 1st after the close of the session, unless the legislature by a vote of two-thirds of the members present and voting, in each house, shall declare it an emergency measure, which declaration shall be set forth in the act, provided, however, that no act granting a franchise or special privilege, or act creating any vested right or interest other than in the state, shall be declared an emergency measure. An emergency measure shall take effect and be in force from and after its passage and approval by the governor.

Article XV, Section 202. Any amendment or amendments to the constitution of the state may be proposed in either house of the legislature, and if the same shall be agreed to upon roll call by a majority of the members elected to each house, it shall be submitted to the electors and if a majority of the votes cast thereon are affirmative, such amendment shall be a part of this constitution.

Amendments to the constitution of the state may also be proposed by an initiative petition of the electors; such petition shall be signed by twenty thousand electors at large and shall be filed with the secretary of state at least one hundred twenty days prior to the election at which they are to be voted upon, and any amendment, or amendments so proposed, shall be submitted to the electors and become a part of the constitution, if a majority of the votes cast thereon are affirmative. All provisions of the constitution relating to the submission and adoption of measures by initiative petition, and on referendum petition shall apply to the submission and adoption of amendments to the constitution of the state.

8. Wisconsin Proposed Constitutional Amendment (Rejected 1914).

Resolved by the Assembly, the Senate concurring, That Section 1, of Article IV of the constitution, be amended to read:

Section 1. The legislative power shall be vested in a senate and assembly, but the people reserve to themselves power, as herein provided, to propose laws and to enact or reject the same at the polls, independent of the legislature, and to approve or reject at the polls any law or any part of any law enacted by the legislature. The limitations expressed in the constitution on the power of the legislature to enact laws shall be deemed limitations on the power of the people to enact laws.

2. a. Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house of which he is a member, in open session, at any time during any session of the legislature, any bill or any amendment to any such bill; provided, that the time for so introducing a bill may be limited by rule to not less than thirty legislative days.

b. The chief clerk shall make a record of such bill and every amendment offered thereto and have the same printed.

3. A proposed law shall be recited in full in the petition and shall consist of a bill which has been introduced in the legislature during the first thirty legislative days of the session, as so introduced; or, at the option of the petitioners, there may be incorporated in said bill any amendment or amendments introduced in the legislature. Such bill and amendments shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed laws shall be submitted to a vote of the people, and shall become a law if it is approved by a majority of the electors voting thereon, and shall take effect and be in force from and after thirty days after the election at which it is approved.

4. a. No law enacted by the legislature, except an emergency law, shall take effect before ninety days after its passage and publication. If within said ninety days there shall have been filed a petition to submit to a vote of the people such law or any part thereof, such law or such part thereof shall not take effect until thirty days after its approval by a majority of the qualified electors voting thereon.

b. An emergency law shall remain in force, notwithstanding such petition, but shall stand repealed thirty days after being rejected by a majority of the qualified electors voting thereon.

c. An emergency law shall be any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays. No law making any appropriation for maintaining the state government or maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation shall only take effect as in case of other laws, and such increase, or any part thereof, specified in the petition may be referred to a vote of the people upon petition.

5. If measures which conflict with each other in any of their essential provisions are submitted at the same election, only the measure receiving the highest number of votes shall stand as the enactment of the people.

6. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a measure to the people when signed by eight per cent of the qualified electors calculated upon the whole number of votes cast for governor at the last preceding election, of whom not more than one-half shall be residents of any one county.

7. The vote upon measures referred to the people shall be taken at the next election occurring not less than four months after the filing of the petition, and held generally throughout the state pursuant to law, or specially called by the governor.

8. The legislature shall provide for furnishing electors the text of all measures to be voted upon by the people.

9. Except that measures specifically affecting a sub-division of the state may be submitted to the people of that subdivision, the legislature shall submit measures to the people only as required by the constitution.

Be it further resolved by the assembly, the senate concurring, That Article XII of the constitution be amended by creating a new section to read:

Sec. 3. 1. a. Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house in which he is a member, in open session, at any time during any session of the legislature, any proposed amendment to the constitution or any amendment to any such proposed amendment to the constitution; provided, that the time for so introducing a proposed amendment to the constitution may be limited by rule to not less than thirty legislative days.

b. The chief clerk shall make a record of such proposed amendments to the constitution and any amendment thereto and have the same printed.

2. Any proposed amendment to the constitution shall be recited in full in the petition and shall consist of an amendment which has been introduced in the legislature during the first thirty legislative days, as so introduced, or, at the option of the petitioners, there may be incorporated therein any amendment or amendments thereto introduced in the legislature. Such amendment to the constitution and amendments thereto shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed amendment shall be submitted to the people.

3. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a proposed amendment to the constitution to the people when signed by ten per cent of the qualified electors, calculated upon the whole number of votes cast for governor at the last preceding election of whom not more than one-half shall be residents of any one county.

4. Any proposed amendment or amendments to this constitution, agreed to by a majority of the members elected to each of the two houses of the legislature, shall be entered on their journals with the yeas and nays taken thereon, and be submitted to the people by the secretary of state upon petition filed with him signed by five per cent of the qualified electors, calculated upon the whole number of votes cast for governor at the last preceding election of whom not more than one-half shall be residents of any one county.

5. The legislature shall provide for furnishing the electors the text of all amendments to the constitution to be voted upon by the people.

6. If the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution, from and after the election at which approved; provided, that if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

7. If proposed amendments to the constitution which conflict with each other in any of their essential provisions are submitted at the same election, only the proposed amendment receiving the highest number of votes shall become a part of the constitution.

9. Illinois Senate Joint Resolution No. 17 (1913) as amended and rejected by the House of Representatives.

Resolved, by the Senate of the State of Illinois, the House of Representatives concurring therein; that there shall be submitted to the electors of this state for adoption or rejection at the next election of members of the General Assembly, a proposition to amend Article IV of the constitution of this state by adding thereto an additional section to be known as Section 35 to read as follows:

Sec. 35. The people reserve power to propose and to enact laws as herein provided. Eight per cent of the electors of the state may propose an Act by initiative petition, verified as to signatures, and filed with the Secretary of State not less than 60 days prior to the date of convening of any regular session of the General Assembly.

The Secretary of State shall transmit a certified copy of the proposed Act to the House of Representatives and to the Senate at the convening of the next regular session of the General Assembly, and the same shall be treated as a bill introduced in the name of the people.

Unless such proposed Act shall, without change, become a law by regular legislative enactment within one year after the date of convening of the General Assembly the Secretary of State shall submit the same by its title to the electors at the next general election.

Provided, that if a proposed Act shall be placed upon its final passage in each House, and shall fail in each House to receive the affirmative votes of one-fourth of the members elected, it shall not be so submitted.

If a proposed Act when submitted to the electors, shall be approved by a majority of the electors voting on the proposition, and by not less than $33\frac{1}{3}$ per cent of the total vote cast at the election, it shall become a law, and take effect on the first day of January, next thereafter.

All laws enacted under the provisions of this section may be subsequently amended or repealed by the General Assembly, and they shall be subject to the same constitutional provisions and limitations as are Acts passed by the General Assembly: Provided such provisions and limitations are not inconsistent with the provisions of this section.

The people reserve power to reject laws passed by the General Assembly and to stay the time of their taking effect, as herein provided. Five per cent of the electors of the State, by a referendum petition, verified as to signatures and filed with the Secretary of State before the taking effect of an Act, may require that such Act shall not take effect until submitted to the electors.

The Secretary of State shall submit such Act, by its title, to the electors at the next general election, and if rejected by a majority of the electors voting on the proposition it shall become void, otherwise it shall take effect on the first day of January next thereafter.

Acts passed in case of emergency by a vote of two-thirds of all the members of each House, and Acts making appropriations for the ordinary and contingent expenses of the government or of any existing institutions of the State, shall not be subject to Referendum petition.

All acts shall take effect as provided in Section 13 of this Article, except that no Act subject to a referendum petition shall take effect within less than 30 days after it becomes a law; and, provided, further, that one per cent of the electors of the State, by referendum petition, verified as to signatures and filed with the Secretary of State before the taking effect of an Act, may require that such Act shall not take effect until 90 days after it become a law, pending the filing of a petition supplementing and completing the said referendum petition.

The governor and two circuit judges, said judges to be of different political affiliations, shall constitute a board to pass upon the sufficiency of every initiative and referendum petition, and when approved by them its sufficiency shall not be questioned in any court. Said judges shall be designated by the Chief Justice of the Supreme Court. At said canvass, those favoring each petition and those opposing same shall be entitled to be heard by one designated agent or attorney.

The total vote cast at the last general election shall be the basis upon which the required per cent of electors herein specified shall be estimated, and not less than 50 per cent of the signatures required shall be electors reading outside of the County of Cook.

This amendment shall be self-executing, but appropriate legislation may be enacted regulating the details of its operation.

10. Combination of Wisconsin and Illinois plans for laws.

(A similar plan could be worked out in the amending clause for a constitutional amendment).

Section 1. A petition signed by qualified electors of the state equal to five per cent of the votes cast for governor at the last preceding election (not more than one-half of whom shall be residents of any one county) may require the submission to the people of any bill proposed in either house of the general assembly, either in its original form or with any amendments proposed in either house. However, if

such a bill shall be placed upon its final passage in each house and fails in either house to receive the affirmative votes of one-third of all members elected to such house it shall not be so submitted. The petition shall be filed with the Secretary of State within six months after the adjournment of the general assembly and shall contain the full text of the bill whose submission is required. Petitions shall be verified by affidavits of those obtaining the signatures. The governor, attorney general and secretary of state shall constitute a board to pass upon the sufficiency of petitions, and when a petition is approved by them its sufficiency shall not be questioned in any court. A finding of the board that a petition is not sufficient may be reviewed upon a petition for mandamus filed in the Supreme Court within 30 days.

Sec. 2. The people reserve power to reject or to repeal laws passed by the general assembly. Five per cent of the electors of the state, subject to the same conditions as those provided in Section 1 above, may require that any act passed by the General Assembly be submitted to the electors.

Sec. 3. Bills to be submitted under the terms of Section 1 and laws to be submitted under the terms of Section 2 of this article, shall be submitted at the next general election, unless the general assembly by a vote of a majority of all the members elected to each of the two houses shall order a special election for that purpose. If a majority of the electors voting upon a measure submitted under the terms of Section 1 shall vote for the proposed measure, it shall be adopted, provided such majority be not less than one-third of the total number voting at the election if it is a general election, or if it is a special election provided such majority be not less than one-third of the total vote cast at the last preceding general election.

Any measure submitted under the terms of section 2 shall be repealed from and after the announcement of the popular vote, provided a majority of those voting thereon vote for its rejection, if such majority be not less than one-third of the total number voting at the election if it is a general election, or if it is a special election provided such majority be not less than one-third of the total vote cast at the last preceding general election.

APPENDIX No. 3. TEXT OF PUBLIC POLICY QUESTIONS IN ILLINOIS ON THE INITIATIVE AND REFERENDUM.

1902.

No. 1. Shall the next general assembly submit to the people of the State of Illinois, at the next state election, a constitutional amendment providing for the control of legislation by the people, by means of the initiative and referendum; said amendment to provide for the initiation of legislation upon a petition of eight per cent of the voters of the political divisions affected; and for the reference of legislation upon a petition of five per cent of the voters of the political divisions affected, the action of the majority of the electors voting to be final; thus restoring to the people the power they once held, but which they delegated to the general assembly by the constitution?

No. 2. Shall the next general assembly enact a statute by which the voters of the political subdivisions of the State of Illinois may be enabled to initiate desired local legislation, by filing a petition therefor, signed by eight per cent of the legal voters in said political subdivisions; and to have referred to the voters any legislation enacted by the several local legislative bodies, by the filing of a petition therefor of five per cent of the legal voters of any such political subdivisions; the action of a majority of those voting to decide in each case?

1904.

No. 2. Shall the State legislature pass a law enabling the voters of any county, city, village or township, by majority vote, to veto any undesirable action of their respective law-making bodies?

1910.

No. 1. Shall the next general assembly submit to the voters of the State of Illinois at the next following State election an amendment to the State Constitution, providing for the control of legislation by the people, by means of the initiative and referendum; said amendment to provide for the initiation of legislation upon a petition of eight per cent of the voters, and for the reference of legislation upon a petition of five per cent of the voters, the action of the majority of the electors voting to be final; thus restoring to the people the power they once held, but which they delegated to the General Assembly by the Constitution?

Proposed questions to be submitted November 4, 1919.

No. 1. Shall the members of the Fifth Constitutional Convention be instructed to submit a proposal for the Initiative and Referendum;

the term Initiative as herein used, meaning the power to bring proposed laws and Constitutional Amendments to popular vote, at any regular election, by petition of 100,000 electors at large, all measures so submitted to become laws when approved by a majority of those voting thereon; the term referendum, as herein used, meaning the power to suspend specified act or acts of the legislature, by petition of 50,000 electors at large, until such act or acts shall have been referred to popular vote and approved by a majority of those voting thereon; said powers of the Initiative and Referendum also to be understood as being extended by the Constitution to the electors of every municipality and other political subdivision or district of the State, and to apply to all local, special and municipal legislation, in or for their respective municipalities and subdivisions or districts?

No. 2. Shall the members of the Fifth Constitutional Convention be instructed to submit the proposal for the Initiative and Referendum, as defined in Question No. 1, for a separate vote, in such manner that said proposal, if approved by a majority of those voting thereon, shall take effect, either as part of a new constitution or as an amendment of Article 4, Section 1, of the present constitution?

APPENDIX NO. 4. ILLINOIS PUBLIC POLICY OF 1901.

An act providing for an expression of opinion by electors on questions of public policy at any general or special election. (Approved May 11, 1901. In force July 1, 1901.)

Sec. 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That on a written petition signed by twenty-five per cent of the registered voters of any incorporated town, village, city, township, county or school district; or ten per cent of the registered voters of the State, it shall be the duty of the proper election officers in each case to submit any question of public policy so petitioned for, to the electors of the incorporated town, village, city, township, county, school district or state, as the case may be, at any general or special election named in the petition; provided, such petition is filed with the proper election officers in each case not less than sixty (60) days before the date of the election at which the question or questions petitioned for are to be submitted. Not more than three propositions shall be submitted at the same election and such proposition shall be submitted in the order of its filing.

Sec. 2. Every question submitted to electors shall be printed in plain, prominent type upon a separate ballot, in form required by law, the same as a constitutional amendment or other public measure proposed to be voted upon by the people.

APPENDIX NO. 5. TEXT OF CALIFORNIA RECALL PROVISIONS.

Article XXIII, Section 1. Every elective public officer of the State of California may be removed from office at any time by the electors entitled to vote for a successor of such incumbent, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

The procedure hereunder to effect the removal of an incumbent of an elective public office shall be as follows: A petition signed by electors entitled to vote for a successor of the incumbent sought to be removed, equal in number to at least twelve per cent of the entire vote cast at the last preceding election for all candidates for the office, which the incumbent sought to be removed occupies (provided that if the officer sought to be removed is a state officer who is elected in any political subdivision of the State, said petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies) demanding an election of a successor to the officer named in said petition, shall be addressed to the Secretary of State and filed with the clerk, or registrar of voters, of the county or city and county in which the petition was circulated; provided, that if the officer sought to be removed was elected in the State at large such petition shall be circulated in not less than five counties of the State, and shall be signed in each of such counties by electors equal in number to not less than one per cent of the entire vote cast, in each of said counties, at said election, as above estimated. Such petition shall contain a general statement of the grounds on which the removal is sought, which statement is intended solely for the information of the electors, and the sufficiency of which shall not be open to review. When such petition is certified as is herein provided to the Secretary of State, he shall forthwith submit the said petition, together with a certificate of its sufficiency, to the Governor, who shall thereupon order and fix a date for holding the election, not less than sixty days nor more than eighty days from the date of such certificate of the Secretary of State.

The Governor shall make or cause to be made publication of notice for the holding of such election, and officers charged by law with duties concerning elections shall make all arrangements for such election and the same shall be conducted, returned, and the result thereof declared, in all respects as are other state elections. On the official

ballot at such election shall be printed, in not more than two hundred words, the reasons set forth in the petition for demanding his recall. And in not more than three hundred words there shall also be printed, if desired by him, the officers' justification of his course in office. Proceedings for the recall of any officer shall be deemed to be pending from the date of the filing with any county, or city and county clerk, or registrar of voters, of any recall petition against such officer; and if such officer shall resign at any time subsequent to the filing thereof, the recall election shall be held notwithstanding such resignation, and the vacancy caused by such resignation, or from any other cause, shall be filled as provided by law, but the person appointed to fill such vacancy shall hold his office only until the person elected at the said recall election shall qualify.

Any person may be nominated for the office which is to be filled at any recall election by a petition signed by electors, qualified to vote at such recall election, equal in number to at least one per cent of the total number of votes cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Each such nominating petition shall be filed with the Secretary of State not less than twenty-five days before such recall election.

There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall (name of person against whom the recall petition is filed) be recalled from the office of (title of office)?" following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate, by stamping a cross (x), his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote cast shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall thereupon be deemed removed from such office upon the qualification of his successor. The canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law.

Any recall petition may be presented in sections, but each section shall contain a full and accurate copy of the title and text of the petition. Each signer shall add to his signature his place of residence,

giving the street and number, if such exist. His election precinct shall also appear on the paper after his name. The number of signatures appended to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the State shall be competent to solicit such signatures within the county, or city and county, of which he is an elector. Each section of the petition shall bear the name of the county, or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same stating his qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be; and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer an oath. Such petition so verified shall be *prima facie* evidence that the signatures thereto appended are genuine and that the persons signing the same are qualified electors. Unless and until it is otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of electors. Each section of the petition shall be filed with the clerk, or registrar of voters, of the county or city and county in which it was circulated; but all such sections circulated in any county or city and county shall be filed at the same time. Within twenty days after the date of filing such petition, the clerk, or registrar of voters, shall finally determine from the records of registration what number of qualified electors have signed the same; and, if necessary, the board of supervisors shall allow such clerk or registrar additional assistants for the purpose of examining such petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to such petition his certificate, properly dated, showing the result of such examination, and submit said petition, except as to the signatures appended thereto, to the Secretary of State and file a copy of said certificate in his office. Within forty days from the transmission of the said petition and certificate by the clerk or registrar of voters to the Secretary of State, a supplemental petition, identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid. The clerk or registrar of voters shall within ten days after the filing of such supplemental petition make like examination thereof as of the original petition, and upon the conclusion of such examination shall forthwith attach to such petition his certificate, properly dated, showing the result of such examination, and shall forthwith transmit such supplemental petition, except as to the signatures thereon, together with his said certificate, to the Secretary of State.

When the Secretary of State shall have received from one or more county clerks, or registrars of voters, a petition certified as herein provided to have been signed by the requisite number of qualified

electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the State a certificate showing such fact; and such clerk or registrar of voters shall thereupon file said certificate for record in his office.

A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by him of a certificate or certificates showing the said petition to be signed by the requisite number of electors of the State.

No recall petition shall be circulated or filed against any officer until he has actually held his office for at least six months; save and except it may be filed against any member of the State Legislature at any time after five days from the convening and organizing of the Legislature after his election.

If at any recall election the incumbent whose removal is sought is not recalled, he shall be repaid from the State treasury any amount legally expended by him as expenses of such election, and the Legislature shall provide appropriation for such purpose, and no proceedings for another recall election of said incumbent shall be initiated within six months after such election.

If the Governor is sought to be removed under the provisions of this article, the duties herein imposed upon him shall be performed by the Lieutenant-Governor; and if the Secretary of State is sought to be removed, the duties herein imposed upon him shall be performed by the State Controller; and the duties herein imposed upon the clerk or registrar of voters, shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.

The recall shall also be exercised by the electors of each county, city and county, city and town of the State, with reference to the elective officers thereof, under such procedure as shall be provided by law.

Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising such recall powers in such counties, cities and counties, cities and towns, but shall not require any such recall petition to be signed by electors more in number than twenty-five per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Nothing herein contained shall be construed as affecting or limiting the present or future powers of cities or counties or cities and counties having charters adopted under the authority given by the Constitution.

In the submission to the electors of any petition proposed under this article all officers shall be guided by the general laws of the State, except as otherwise herein provided.

This article is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting the provisions of this article or the powers herein reserved.

CONSTITUTIONAL CONVENTION

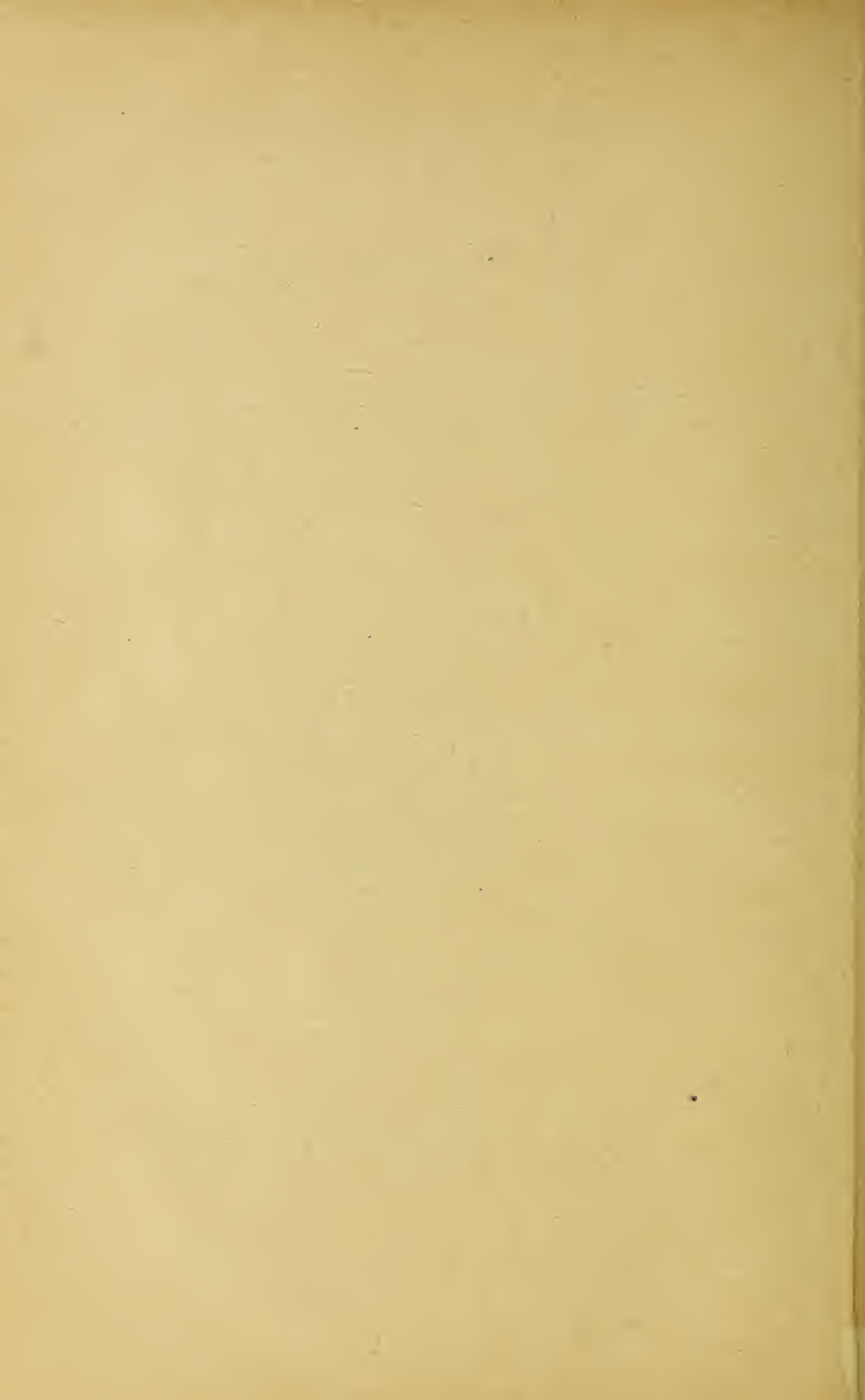
BULLETIN No. 3

The Amending Article of the Constitution



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I. SUMMARY.

Constitutional change in Illinois is extremely difficult and in this respect Illinois ranks with a small group of states which make constitutional amendments difficult if not impossible.

As suggested in this pamphlet, it is desirable to keep temporary details out of the constitution. However, the state constitutional development in this country since 1850 has been toward placing a greater amount of detail in the constitutional text. If details are to be placed in the constitutional text, it is of course necessary that some provision be made for easy alteration of such detail when it has been outgrown or when change becomes necessary. Illinois constitutions of 1848 and 1870 have contained a large amount of detail but have not provided a ready means for prompt alteration of this detail.

In Illinois, as in all of the other states except New Hampshire and probably Rhode Island, two methods of constitutional alteration exist: (a) alteration through the assembling of a constitutional convention, and (b) alteration through specific proposal by the representative legislature or by the popular initiative. In planning any amending clause for Illinois care should be taken that the two methods of constitutional alteration are considered together.

A constitutional convention is a cumbersome piece of governmental machinery intended for use only in case a complete revision of the constitution is desired or in case matters of fundamental importance are to be dealt with. It is for this reason that the states have provided other methods of constitutional change for matters of less fundamental importance. New Hampshire, however, has adhered to the plan of constitutional conventions for the proposal of all changes, and provides for a popular vote upon the holding of such a convention at the end of each seven year period. Constitutional conventions have been assembled in New Hampshire in 1902, 1912, and 1918-19. The provisions for constitutional amendment through legislative proposal in the Illinois constitution of 1848 were so cumbersome that a constitutional convention was substantially the only method for changing a mass of temporary detail which almost immediately required change. It was for this reason that a constitutional convention was assembled in 1862, and when the work of this convention was rejected another convention became necessary in 1869-70. It should not be necessary to assemble constitutional conventions except at long intervals, but the pressure for the assembling of such a convention will necessarily be great if the method provided for specific amendment is not relatively simple.

The Illinois constitution of 1870 makes the specific amendment of the present constitution difficult. This difficulty is occasioned not so much by any one thing as by the fact that several provisions of the present amending clause unite to present obstacles to change. The present constitution provides that (a) the general assembly shall have

no power to propose amendments to more than one article at the same session nor to the same article oftener than once in four years, (b) that two-thirds of all members elected to each of the two houses must concur in order to propose a constitutional amendment, (c) that proposed amendments shall be approved by a majority of the electors voting at a general election.

A plan which would probably meet all requirements would be that of making the assembling of a constitutional convention relatively difficult, but of making the proposal of specific amendments relatively easy.

In a pamphlet on the initiative and referendum there is a rather full discussion of the initiative as applied to constitutional amendments. Some matter relating to the initiative as applicable to constitutional amendments appears also in this pamphlet. If the initiative for constitutional amendments is to be adopted, the easier process of specific amendment will of course include two methods of proposing constitutional changes.

In the preparation of this pamphlet a table of constitutional changes proposed and adopted in all of the states since 1900 has been prepared. Some of the statements in this pamphlet are based upon this material. It has seemed unnecessary to publish these tables, but they will be available for any one desiring to analyze the operation of amending methods in this and other states.

In Bulletin No. 1 an extended review will be found of constitutional changes which have taken place since 1900. Seven new constitutions have been adopted since 1900: Alabama (1901), Virginia (1902), Oklahoma (1907), Michigan (1908), Arizona (1911), New Mexico (1911) and Louisiana (1913). Proposed new constitutions have been rejected in Connecticut (1902, 1907) New York (1915) and Arkansas (1918). Constitutional conventions in Massachusetts (1917-19), New Hampshire (1902, 1912) and Ohio (1912) submitted proposals of amendment rather than complete new constitutions.

Since 1900, more than fifteen hundred amendments have been proposed in the forty-eight states, of which about nine hundred have been adopted. Of this number, one hundred and fifty were submitted in California, one hundred and thirty-four in Louisiana and eighty-eight in Oregon.

California has a detailed constitution (which is steadily becoming more detailed), and has a long established practice of adopting frequent constitutional changes. Eighty-four of the one hundred and fifty amendments in this state were submitted before the initiative was available for this purpose, and of the sixty-six submitted in the period 1912-1918, fifty-one were proposed by legislative action, so that the popular initiative can hardly be credited with the frequent proposal of amendments.

Louisiana, which does not have the initiative but has an elaborate and complex constitution, has had since 1900 not only one hundred and thirty-four proposed amendments but also a constitutional convention. Of the eighty-eight proposals submitted in Oregon since 1900, forty-three were proposed by initiative petition.

II. ILLINOIS EXPERIENCE.

Historical Account: The Illinois constitution of 1818 provided for the alteration of that instrument only through the medium of a constitutional convention. Practically all the states came, after experience, to a realization that specific constitutional amendments might often be desirable, and the assembling of a convention for the purpose of proposing one or two slight amendments is both cumbersome and expensive. The constitution of 1848 was, therefore, in line with the general development in other states when it provided for the proposal of amendments by legislative action as well as through the assembling of a constitutional convention.

The proposed constitution rejected in 1862 made somewhat fuller provisions regarding a constitutional convention than did the constitutions of 1818 and 1848, specifically requiring that alterations made by a convention should be submitted to the people for adoption or rejection. The proposed constitution of 1862 left unaltered the provisions of the constitution of 1848 for legislative proposal of amendments, with the exception that the general assembly was to have power to propose amendments to no more than two articles of the constitution at the same time.

In the convention of 1869-70, difficulty presented itself with respect to the oath to be taken by delegates and also with respect to the filling of vacancies in the convention. To meet these difficulties for the future and to make the convention clause more specific, detailed provisions were adopted as to the composition and organization of a constitutional convention, and it was also required that the work of a convention be submitted to the electors for ratification.

With respect to the power of the general assembly to propose amendments, important changes were made. The constitution of 1848 required the action of two successive sessions of the general assembly for the proposal of constitutional amendments, and the constitution of 1870 simplified the procedure by providing for proposal as a result of one action of the general assembly.

In two other respects, however, the amending process in the constitution of 1870 was made more difficult than that of the constitution of 1848. The constitution of 1848 provided that "the general assembly shall not have power to propose an amendment or amendments to more than one article at the same session". To this provision the constitution of 1870 added the provision that amendments should not be proposed to the same article oftener than once in four years.

The constitution of 1848 provided that an amendment proposed by the general assembly should be submitted at the next general elec-

tion, and should be adopted if "a majority of all the electors voting at such election for members of the house of representatives shall vote for such amendment". The constitution of 1870 provides that submission shall be at the next election of members of the general assembly, and that the amendment shall be adopted if approved by "a majority of the electors voting at said election".

Although in certain respects an amendment of the constitution of 1870 was made more difficult than that of previous constitutions, it is hardly accurate to say that the present constitution is more difficult to amend than previous constitutions. The difficult and cumbersome method of proposing amendments by the legislature under the constitution of 1848 prevented constitutional change, and only one amendment was proposed to the people between 1848 and 1870. In spite of the added difficulties imposed by the constitutional convention of 1869-70, it may be said that each new constitution in Illinois has been easier to amend than the preceding constitution.

One point, however, was not sufficiently considered by the framers of either the constitution of 1848 or of the constitution of 1870. The constitution of 1818 contained little detail, and on that account would not have required as frequent change as the later constitutions. The framers of the later constitutions however did not realize that they were placing in the constitutions a mass of detail, which must be subject to relatively easy change, and did not adjust their amending methods to this fact. If a constitution is to deal with nothing but matters of fundamental and permanent importance, it may properly be difficult to alter, although one generation can hardly determine finally what are to be matters of fundamental and permanent importance for the next generation. If numerous details are to be placed in a constitution, some provision must be made for the ready alteration of such details or the constitution becomes a permanent bar to progress. The framers of the constitutions of 1848 and 1870 placed a large amount of detail in these constitutions, and at the same time adopted amending processes for these constitutions upon the assumption that the constitutions contained only matters fundamental in character and unchanging in principle. These two attitudes were necessarily conflicting and produced serious difficulties.

Amending clause of the constitution of 1870: The amending clause of the constitution of 1870 is, as has been suggested above, simpler than was the amending clause of 1848. However, into the clause of 1870 were inserted two provisions which have made difficulty, although as to one of them at least this difficulty probably could not have been foreseen by the members of the convention of 1869-70.

The points of difficulty in the constitution of 1870 are: (a) The limitation against the proposal of amendments to more than one article of the constitution at the same session, or to the same article oftener than once in four years. (b) The requirement of a two-thirds vote of all members elected to each of the two houses in order to propose a

constitutional amendment, and (c) The provision that proposed amendments shall be approved by a majority of the electors voting at the general election.

Limitations upon the proposal of amendments: The provision against the proposal of amendments to more than one article of the constitution at the same session first appeared in the constitution of 1848. With respect to the operation of this limitation in the constitution of 1848 Mr. Dement said in the convention of 1870: "Such were supposed to be the defects of the present constitution in several of the articles, that the persons whose attention was directed to abuses in the judiciary department of the state would not propose an amendment unless to that article. Others who viewed the objections to the executive or legislative articles as more serious, insisted that those were the articles that should be first amended—or one of those articles; and the consequence was the general assembly could not unite a majority of two-thirds in favor of any one amendment.¹ This situation has continued in the constitution of 1870. More than one amendment may be proposed at the same session if several proposed amendments relate to the same article of the constitution. So, for example, proposals to abolish cumulative voting and establish the initiative and referendum in legislation may under the present constitution be submitted at the same session of the general assembly. But if only one were submitted, the other could not be proposed within the succeeding four years. However, where several amendments to the constitution have been urged at the same time, they have usually related to different articles. In as much as proposed amendments to different articles could not be submitted at the same session, deadlocks naturally resulted among the groups favorable to the amendment of different articles, just as in the period before 1870. It was suggested in 1870 that if more than one amendment could be proposed at the same time, there would be "log rolling" among the advocates of various amendments. An equally serious danger has resulted in the present constitution in that deadlocks may prevent any proposed change, and in that the opponents of a proposed amendment may hide their opposition by advocating some other proposal at the same time.

Aside from the possibility of deadlock presented by the constitutional provision here under discussion, another difficulty presents itself in that a matter sought to be handled by amendment may be dealt with by two separate articles of the constitution. For example, any initiative and referendum proposal both for legislation and for constitutional amendments would have had to alter two articles of the present constitution. In this as in many other cases, but one subject is involved, but to handle that subject as a unit is impossible under the present rule.

¹ *Debates and Proceedings, Illinois Constitutional Convention, 1869-70, II, 1315.*

Each article of the constitution is bound up more or less closely with every other article, and in amending one, some change is apt to be worked in others. With reference to this matter, however, the Supreme Court of Illinois has taken a liberal and common-sense view and has said that the restriction in the constitution "was not intended to prevent implied amendments or changes which were necessarily worked in other articles of the constitution by the express amendment of a particular article of the constitution. Any other view would be so narrow as to prohibit the general assembly in many, if not in all cases, from proposing amendments to a particular article of the constitution, as the several articles of the constitution are so far connected and dependent upon each other that a change in any article generally, if not universally, has the effect to produce changes of more or less importance in one or more of the articles of the constitution other than that which is expressly amended."² But this interpretation gives no aid with respect to a proposal which may require changes directly or expressly in more than one article of the constitution.

The limitation that amendments may not be proposed to the same article oftener than once in four years has not made any apparent difficulty since it was inserted in the constitution of Illinois. This has been primarily because the "one article at a time" clause has discouraged amendments and prevented the raising of a situation in which the four-year limitation might operate. Had the other limitation not been present, it is possible that the four-year limitation would have proven an obstacle to amendments. Where an article of the constitution contains as many and as distinct provisions as does the legislative article, there seems to be no logical reason for the four-year limitation. This is especially true in view of the fact that two or more amendments to the same article may be proposed and submitted at the same time under the present constitutional provisions.

Legislative proposal of amendments: The constitution of 1848 required the action of two successive sessions of the general assembly, this action to be taken by two-thirds of all the members elected to each of the two houses in the first session, and by a majority of all the members elected to each house in the second session. The constitution of 1870 simplified this machinery very materially by providing for submission to the people after an affirmative vote of two-thirds of all the members elected to each of the two houses. The requirement of action by two successive legislatures had proven unnecessary, not only in Illinois but in other states, and the tendency in other states has been to discard such a requirement.

The two-thirds vote required by the present constitutional provision would probably not have proven essentially difficult had other limitations upon the amending process not existed. In the states providing for the proposal of constitutional amendments by one legislature only, the more common requirement is that the proposal be one by two-

² *City of Chicago v. Reeves*, 220 Ill. 284 (1906).

thirds of the members elected to each of the two houses, although some states require a three-fifths vote, and recently there has been a tendency to require merely a majority vote.

Popular vote required for the adoption of amendments: As has already been indicated, the constitution of 1870 requires that a proposed amendment shall receive the votes of a majority of the electors voting at the next election of members of the general assembly. The constitution of 1848 on the other hand provided for adoption upon the vote of a majority of all the electors voting at the next general election for members of the house of representatives. The framers of the constitution of 1870 do not seem to have intended to make the adoption of a constitutional amendment by popular vote more difficult, but such a result was actually accomplished by a slight change in phraseology.

The constitution of 1848 provided that amendments should be submitted at the next general election and "if a majority of all the electors voting at such election for members of the house of representatives shall vote for such amendment or amendments, the same shall become a part of the constitution." The constitution of 1870 provides that proposed amendments "shall be submitted to the electors of this state for adoption or rejection, at the next election of members of the general assembly, and if a majority of the electors voting at said election shall vote for the proposed amendments they shall become a part of this constitution". In view of the fact that the highest vote at a general election is apt to be larger than the votes for members of the general assembly, the constitution of 1870 under present voting methods imposes a higher standard of popular vote than did the constitution of 1848. However, this would probably not have been the case in 1870, and there was much plausibility in the contention that the language of the two constitutions was intended to mean the same thing, although, narrowly construed, the language of the constitution of 1870 said something different from that of the constitution of 1848. This view was rejected by a divided court in *People v. Stevenson*.³

The form of ballot employed in Illinois at different periods has had a pronounced influence upon the result of popular voting. Before 1848 viva voce voting was permitted by the constitution of Illinois. Under this plan when the voter approached the polls he was asked not only to name his choice of candidates but also to vote "yes" or "no" upon any measure that may have been pending. Under the circumstances it was easier to vote than to refuse to answer. This in part explains the fact that the vote in this state upon the question of calling a convention in 1824 was almost equal to the total vote cast for candidates at the same election.

The printed ballot has been in use in Illinois since 1848. Until 1891, however, the printing of ballots devolved upon political parties,

and the parties could either: (1) omit all mention of the proposed amendment from their ballots; (2) print the measure in such a way as to leave the voter an option to vote for or against it, or (3) to print either the affirmative or the negative of the measure. The third alternative was the one usually taken advantage of, and every straight party vote was therefore cast in accordance with the party action which appeared upon the ballot. Upon a ballot of this character it was easily possible to cast upon a measure substantially the same vote as that cast by regular voters upon candidates. For this reason the framers of the constitution of 1869-70 would probably have had little if any notion of difficulty being occasioned by the variation in language as to the popular majority required for the approval of constitutional amendments.

An official ballot act was adopted in 1891 and constitutional amendments were, during the period from 1891 to 1899, printed upon the official ballot for candidates with blank spaces for a vote upon either side of the question. During this period, with measures printed upon and usually at the bottom of the candidates ballot, less than twenty-five per cent of those voting in the elections expressed themselves upon measures. The party column ballot did not permit of any satisfactory adjustment for voting upon questions, and the only persons voting upon measures were those who searched out the measures upon the printed ballot. In 1899 legislation was enacted providing for a separate ballot for measures, and with a separate ballot the number of votes upon measures almost immediately doubled. The voters' attention was directly called to the measures being submitted, for the so-called "little ballot" for measures was handed to the voter, together with the ballot for candidates. It became as easy to vote upon the measures as to refrain from doing so.

Upon measures whose importance was not relatively different, it was easy to get out a large vote before 1891, impossible between 1891 and 1899, and difficult though not impossible since 1899.

Upon the constitutional amendment adopted in 1904 the requisite vote was obtained only after an expensive campaign. Upon the amendment of 1908 all parties were united and a vigorous campaign was conducted. Upon the proposed tax amendment of 1916 a vigorous campaign was conducted but this proposal failed, although the favorable vote was 656,298 as against 295,782. The favorable vote was not a majority of the total vote at the election, which was 1,343,381.

The matter here discussed is of course entirely unrelated to the terms of the constitution, but it indicates the extent to which ballot forms may determine the ease or difficulty of operating under a constitutional provision. In 1870 the popular vote required by the constitution would have been relatively easy to obtain upon almost any measure as to which the favorable sentiment was stronger than the opposition, and the same situation substantially continued until 1891. Between the years 1891 and 1899 it would have been practically impossible to adopt any constitutional change because of the ballot form then in use. Since 1899 a proposed constitutional amendment may be

adopted if public sentiment is sufficiently united and if a sufficiently vigorous campaign is made, although the chances even then are against the proposal.⁴

Constitutional convention under the constitution of 1870: Under the constitution of Illinois the following steps are necessary in order to obtain constitutional revision through a convention: (1) submission to the electors of the question as to whether a constitutional convention should be called, this submission requiring a vote (entered upon the journals thereof) of two-thirds of the members of each house; (2) vote for a convention by a majority of the electors voting at the next general election; (3) action by the next general assembly providing for a convention; (4) meeting of the convention within three months after the election of its members and the preparation of "such revision, alteration or amendments of the constitution as shall be deemed necessary"; (5) approval of such proposed changes by a majority of the electors voting at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment of the convention.

Since 1909 a systematic and continuous effort has been made to obtain a constitutional convention in this state, and earlier attempts had been made beginning with the year 1884. It is difficult to obtain a vote of two-thirds of the members of each house, and equally difficult to obtain the approval of a majority of the electors voting at the next general election. However these difficulties were overcome in 1917 and 1918 and the general assembly by legislation in 1919 provided for the assembling of the constitutional convention of 1920.

The assembling of a constitutional convention should be a difficult task, if other and simpler methods are provided for the alteration of the constitution in specific cases. Although some changes in detail should be made in the present section of the Illinois constitution with respect to the assembling of a constitutional convention, there may be some question as to whether the assembling of such a convention should be made easier.

Relation between two methods of constitutional alteration: The chief difficulty with respect to the alteration of the constitution of 1870 is that both methods prescribed for constitutional change are difficult of operation. The process of specific amendment is necessarily the simpler, and the less expensive. This process should be employed for changes ordinarily desired, leaving the assembling of a convention for the less frequent and more serious task of re-examination of the whole of the constitutional text. However, the two methods of constitutional change now provided by the constitution of Illinois do

⁴ See Gardner, C. O., *The working of the state-wide referendum in Illinois*. *American Political Science Review*, V, 394 (1911)

not bear a proper relationship to each other, because the method of specific amendment is so difficult that constitutional revision of any important character must almost necessarily await the time when the need for change has become so serious as to force the assembling of a convention. The desirable results to be obtained from having two methods of constitutional alteration, the one simple and inexpensive, the other cumbersome and expensive, is, therefore, largely lost under the present constitutional provisions of Illinois.

Use of amending clause in Illinois since 1870: It is of course true that no constitutional convention has been assembled in Illinois between the years 1870 and 1920, and until 1909 no concerted and persistent effort had been made for the assembling of a constitutional convention.

However, the amending clause has been successfully employed seven times. During the period from 1892 to 1899 three proposed amendments were submitted. Upon the proposal submitted in 1892 for the amendment of the amending article, the negative vote was larger than the affirmative vote. Upon the proposed amendments of 1894 and 1896 and upon the proposed tax amendment of 1916 the affirmative vote was much greater than the negative vote. A table of amendments submitted is given below.

Amendments submitted since 1870.

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
1878 Drainage Amendment	295,960	60,081	356,041	448,796	65.94	79.33
1880 County Officers Amendment	321,552	103,966	425,518	622,306	51.67	68.37
1884 Amendment veto of separate items of appropriation bills	427,821	60,244	488,065	673,096	63.56	72.50
1886 Amendment abolishing convict contract labor ...	306,565	169,327	475,892	574,080	53.40	82.89
1890 Amendment authorizing Chicago bond issue for Columbian Exposition	500,299	55,073	555,372	677,817	73.81	81.93
1892 Amendment to amending article.	84,645	93,420	178,065	871,508	9.70	20.43
1894 Amendment to provide for labor legislation	155,393	59,558	214,951	873,426	17.79	24.61

Amendments submitted since 1870.—Concluded.

Proposition.	Vote for.	Vote against.	Total vote on proposition.	Total vote at election.	Percentage of affirmative vote to total vote at election.	Percentage of vote on proposition to total vote at election.
1896 Amendment to article on amendment	163,057	66,519	229,576	1,090,869	14.94	21.04
1904 Amendment providing for special legislation for Chicago	678,393	94,038	772,431	1,089,458	62.27	70.90
1908 Amendment to separate section on canal to authorize \$20,000,000 bond issue	692,522	195,177	887,699	1,169,330	59.22	75.91
1916 Tax amendment to the constitution ..	656,298	295,782	952,080	1,343,381	48.85	70.87

Eleven proposed amendments have been submitted since 1870 of which seven have been adopted and of which four have failed. Attention however should be called to the fact that five of the amendments which have been adopted were voted upon before the official ballot law of 1891. Of the six amendments submitted since that time one received a smaller affirmative than negative vote, two were adopted, and three failed of adoption because not obtaining a majority of all votes cast in the general election.

As has been suggested above, the provision regarding the submission of an amendment to but one article of the constitution at the same session has in many sessions occasioned deadlocks and has prevented the submission of proposed amendments. The submission of proposed amendments by the general assembly has also been discouraged by the knowledge that it would be very difficult to obtain the adoption of such amendments.

Suggested changes in details of present amending clause: A number of points in the present article for the alteration of the constitution require comment in connection with possible changes:

(a) Section 1 of Article XIV requires for the calling of a convention a majority vote at the next general election. Section 2 requires for the adoption of a proposed amendment "a majority of the electors voting" at the next election of members of the general assembly. This variation in language might easily have been construed to indicate a variation in intent, and this view was actually taken by two members of the Supreme Court in the case of *People v. Stevenson*, 281 Ill. 17 (1917). The language in these two sections should be made uniform or clarified although the decision of the Supreme Court has already by interpretation accomplished the result of clearing up any ambiguity.

(b) Section 2 of Article XIV requires for the proposal of amendments a vote of two-thirds of all the members elected to each of the two houses. Article XIV, Section 1, provides for a vote, in submitting the question of calling a convention, of two-thirds of the members of each house of the general assembly. The language in these two places was probably intended to mean the same thing, but if the necessity for future judicial interpretation of one of these clauses is to be avoided, the language should be made uniform. The language of Section 2 is perfectly clear. The language of Section 1 may perhaps be more properly construed to require merely two-thirds of a quorum of each house although in view of the other provisions of the constitution regarding legislative votes, this may be doubtful. Language similar to that of Article XIV, Section 1, has been construed in other states to require merely two-thirds of a quorum, and a view supporting such a construction has recently been taken by the United States Supreme Court.⁵

(c) Article XIV, Section 1 of the constitution provides that delegates to a convention shall be elected in the same manner "as members of the senate". This has been almost necessarily construed to require partisan nomination and election of delegates in 1919. Such a result could in no way have been anticipated by the framers of the constitution of 1870, and if the result is not desired a change of the section should be made in this respect.⁶

(d) Article XIV, Section 1, of the constitution provides that the qualifications of members of the convention shall be the same as that of members of the senate. The result of this provision is to apply to delegates the provisions of Article IV, Sections 3 and 4 of the constitution, and to exclude members of the general assembly from membership in the constitutional convention unless they cease to be members of the general assembly. Such a result may or may not have been intended, but it should be borne in mind that permitting the present language to stand as it is will have the result indicated.

⁵ Green v. Weller, 32 Miss. 650 (1856); State v. McBride, 4 Mo. 303 (1836); Missouri Pacific Railway Co. v. Kansas, 248 U. S. 276 (1919).

⁶ Manner of choosing delegates to the Illinois constitutional convention, published by the Citizens Association of Chicago, January, 1919.

III. AMENDING METHODS IN OTHER STATES.

Of the present state constitutions the provisions for specific amendment may be divided into six classes:

(1) The proposal of amendments by a constitutional convention only (New Hampshire);

(2) Amendment by the action of two successive legislatures, without a direct popular vote. (Delaware);

(3) Proposal by the legislature with a popular vote upon the proposal, but with the ultimate approval or rejection (South Carolina) or the insertion of the amendment into the constitution (Mississippi) left with the legislature after the people have approved a proposed amendment. It should be noted, however, that in Mississippi, initiated amendments take effect upon approval by the people.

(4) Amendments proposed by the legislature and subject to popular approval, but with the amending process subject to such restrictions as to make constitutional amendment difficult. Such restrictions are of three kinds:

(a) The requirement of action by two successive legislatures for the proposal of amendments. (Connecticut, Indiana, Iowa, Massachusetts, New Jersey, Nevada, New York, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Wisconsin). Of the states enumerated here, attention should be called to the fact that Massachusetts in 1918 and Nevada in 1912 adopted a popular initiative for the proposal of constitutional amendments.

(b) Limitations as to the number, frequency and character of proposals. (Arkansas, Colorado, Illinois, Indiana, Kansas, Kentucky, Montana, New Jersey, Pennsylvania, Tennessee, Vermont.) Of these states, attention should be called to the fact that Colorado, (1910) adopted the initiative for the proposal of constitutional amendments, and that the initiative process is held to be free from the limitation upon the number of amendments that may be submitted; and that Arkansas, (1910) permits the popular initiative of constitutional amendments, but that in Arkansas the popular initiative of amendments is held subject to limitation as to the number of proposed amendments that may be submitted.

(c) Requirements of a popular vote greater than that of a majority of all persons voting upon the amendment. (Alabama, Arkansas, Connecticut, Illinois, Indiana, Minnesota, Mississippi, Nebraska, Oklahoma, Rhode Island, Tennessee, Wyoming). Arkansas (1910) permits the adoption of amendments proposed by initiative petition by a majority of those voting upon the question, but still requires for amendments proposed by legislative

action a majority of those voting at the election. Nebraska (1912) requires a 35 per cent affirmative vote of those voting at the election for amendments proposed by initiative petition and a majority of those voting at the election for amendments proposed by the legislature. Mississippi requires a majority of those voting at the election for constitutional amendments proposed by the legislature, but only a majority of those voting upon the question for amendments proposed by initiative petition. Amendments proposed by constitutional convention in New Hampshire must receive two-thirds of the vote cast upon the question for their adoption or rejection.

(5) The unrestricted proposal of amendments by one legislative action merely and adoption by a majority of the persons voting thereon. (Maryland, Michigan, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Washington, West Virginia.) It is possible that New Mexico should be placed in the group of states having restrictions as to the character of proposals, although the method of proposal under an amendment of 1912 is not difficult. The restrictions upon the legislative proposal of amendments in Colorado, Kansas and Montana are so slight as to make it proper to class the constitutions of these states here rather than among those difficult of amendment. South Carolina may also be classed with this group in so far as respects the proposal of and popular vote upon amendments.

(6) Those which in addition to the legislative power of proposal permit the popular initiation of constitutional amendments. (Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon.)

The tendency has been steadily toward the easy amending process represented by the fifth type, and since 1902 there has been a rapid development in the use of the popular initiative for the amendment of constitutions. The group of states whose constitutions are least flexible is that of subdivision (c) of the fourth type; but where, in addition to the requirement of a majority of all votes at an election, there are other restrictions upon the amending process, the alteration of a constitution often becomes practically impossible. This is true of Tennessee, where we have a combination of limitations—not only is a majority of all votes for representatives required to be cast for an amendment, but amendments may only be proposed once in six years, and the action of two successive legislatures is required for such proposal. So, but to a less extent than in Tennessee, the amending procedure in Illinois and Indiana is burdened by restrictions to such an extent as to be practically unworkable, although the Indiana restrictions are more serious than those of Illinois.

The requirement of proposal by two successive legislatures, while it defeats many projects which would otherwise go to the people, cannot be said to interpose serious obstacles in the way of constitutional alteration, nor in fact even in the cases of Vermont, Tennessee, New Jersey, Pennsylvania and Illinois do the restrictions upon the proposal

of amendments interpose insuperable barriers, but when these provisions are combined with the requirement of a popular vote which is ordinarily impossible to obtain except upon questions of the greatest importance, as is done in Tennessee, the amending process becomes almost useless. Even where the restrictions are not so stringent, but where two legislative actions are required and the power of legislative proposal restricted, the amending process is slow and cumbersome, preventing a ready adjustment of the constitution to changing conditions. This is peculiarly true in view of the fact that substantially all of the state constitutions outside of New England contain numerous detailed provisions which may require frequent alteration.

The hindrances to constitutional change which have been devised are of two kinds: (1) Those which make any change difficult, and (2) those which make an actual change fairly easy but which provide a method of change requiring a long time for its operation. The provisions requiring a popular vote equal to that of a majority of all votes cast in a general election, belong to the first class. Those requiring two legislative actions and permitting the proposal of amendments only at long intervals belong to the second class. Certainly the requirement of a long time to obtain an amendment forms a check upon constitutional change. The limitation through the requirement of action by two successive legislatures is not serious in the small number of states still having annual legislative sessions, as in New York and South Carolina.

Limitations upon submission of constitutional amendments:

There are twelve constitutions which impose limitations as to the number, frequency and character of proposed amendments. New Jersey permits the proposal of amendments only once in five years, Tennessee once in six years, and Vermont once in ten years. Pennsylvania provides that no amendment or amendments shall be submitted oftener than once in five years. The Illinois constitution provides that no amendments shall be proposed to more than one article of the constitution at the same session, and that the same article shall not be amended oftener than once in four years. Colorado (1876) provided that the legislature should not have power to propose amendments to more than one article at the same session, but this provision was amended in 1900 so as to permit the proposal of amendments to six articles at the same time, and even this limitation is held not to apply to initiated amendments.¹

In Indiana, while an amendment agreed upon by one legislature is waiting the action of the succeeding legislature, no additional amendment may be proposed. A similar provision of the Oregon constitution was repealed in 1906. Arkansas, Kansas and Montana forbid the submission of more than three amendments at the same election, and the Arkansas limitation is held to apply to amendments

¹ *People ex rel. Tate v. Provost*, 55 Colo. 199 (1913).

proposed by initiative petition as well as to those proposed by the legislature.²

Kentucky forbids the submission of more than two amendments at the same time and provides that the same amendment shall not be submitted oftener than once in five years. The provisions in Arkansas, Florida, Kentucky, New Mexico and Texas that amendments may be submitted only at regular legislative sessions do not constitute a serious restriction upon the amending power. The New Mexico constitution provides that no amendment affecting certain matters relating to the elective franchise and education shall have effect unless it be proposed by a vote of three-fourths of the members elected to each house and ratified by a vote of the people in an election at which at least three-fourths of the electors voting in the whole state, and at least two-thirds of those voting in each county in the state, shall vote for such amendment. The New Mexico provision was intended for the purpose of giving guarantees to the Spanish speaking population. Certain restrictions upon the use of the initiative in proposing amendments are commented upon in another place.

The restrictions upon the proposal of amendments in Arkansas, Colorado, Kansas and Montana are relatively slight and have not proven troublesome, except in Arkansas where two methods of submission have come into conflict. However, the limitations in Pennsylvania, New Jersey, Vermont, Tennessee, Indiana and Illinois are so strict as to prevent the ready adaptation of the constitutions to changing conditions.

Legislative action in submitting constitutional amendments:

The requirement of action by two successive legislatures was abandoned by Illinois in 1848, and the tendency throughout the country for some time has been directly away from such a plan. Of the nineteen constitutions adopted since 1885 all but three provided for action by one legislature only; Oregon by amendment of 1906 and North Dakota by amendment of 1918 have made a similar provision. In the states providing for only one legislative action, it has usually been customary to require such action to be taken by more than a majority of the legislature. Of the thirty-three constitutions to which amendments may now be proposed by one legislative action, nine permit such proposal by a majority vote (Arizona, Arkansas, Minnesota, Missouri, New Mexico, North Dakota, Oklahoma, Oregon, and South Dakota); seven require a three-fifths vote (Alabama, Florida, Kentucky, Maryland, Nebraska, North Carolina, Ohio); and seventeen require a vote of two-thirds of the members of each of the two houses (California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, South Carolina, Texas, Utah, Washington, West Virginia and Wyoming).

In practically all the states the constitutions specify that the majorities required for the proposal of amendments shall be majorities of all members elected to each of the two houses, although in a

²State *ex rel.* Little Rock v. Donaghey, 106 Ark. 56 (1912).

few cases the requirement is that of a majority or a greater proportion of the members of the two houses. A reference has already been made above to the confusion likely to result through the fact that the convention clause of the Illinois constitution does not state a precise standard in this regard.

The rejected New York constitution of 1915 provided for a joint session of the two houses to consider a proposed amendment after either house had adopted such a proposal, leaving the action of each house to be taken separately, however. A use of joint sessions is prescribed in Massachusetts for the consideration of proposals of amendment initiated by popular petition.

Proposal by popular initiative: A separate pamphlet is devoted to the initiative and referendum, and in this pamphlet will be found a full analysis of the initiative and referendum provisions in all states which have applied the initiative to constitutional amendments. No effort will be made here to analyze the initiative provisions of state constitutions in detail, but a statement will be made sufficiently full to indicate the relationship of the popular initiative to other methods of altering state constitutions.

Of the states which have adopted the popular initiative, fourteen apply this institution to the proposal of constitutional amendments, so that in these states there are two methods of specific proposal of constitutional changes (Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma and Oregon). The states of Oregon, Nevada, Missouri, Arkansas, Colorado and Mississippi permit the use of the initiative for the proposal of constitutional amendments in the same manner as for the proposal of laws. California substantially belongs in this group, the only distinction in this state being that for statutes there is both a direct and an indirect initiative, while for constitutional amendments there is merely a direct initiative.

In seven states distinctions are made between constitutional amendments and statutes. In Oklahoma, Arizona, Nebraska and North Dakota a larger petition is required to propose a constitutional amendment. In Oklahoma an eight per cent petition is sufficient for ordinary legislation, and a fifteen per cent petition is required for constitutional amendments. In Arizona and Nebraska the initiation of ordinary legislation is accomplished by a ten per cent petition, but for constitutional amendment a fifteen per cent petition is required. In North Dakota the initiation of a law requires a petition of 10,000 voters, and the initiation of a constitutional amendment requires a petition of 20,000. Michigan provides for an indirect initiative petition of eight per cent for ordinary legislation, and for a direct initiative petition of ten per cent for constitutional amendments. Ohio provides for an indirect initiative upon ordinary legislation with an original petition of three per cent and a supplemental petition of

an additional three per cent, but for a ten per cent direct initiative upon constitutional amendments. Massachusetts provides for a much more complex method of initiating constitutional amendments than for the initiation of statutes. Under the Massachusetts constitution, 25,000 voters may present an initiative petition for a constitutional amendment. The proposed amendment then goes before a joint session of the general court and three-fourths of the members voting in joint session may amend the proposal. If in such joint session an initiative amendment receives the affirmative vote of not less than one-fourth of all the members elected it is referred to the next general court. In the next general court if an initiative amendment or if a legislative substitute for such amendment receives the affirmative votes of at least one-fourth of all the members elected, the proposed amendment is submitted to the people at the next state election and is adopted if it is approved by a majority of those voting on the amendment, such majority equaling thirty per cent of the total number of ballots cast at the election.

Attention should be called particularly to the fact that Arkansas, Nebraska and Mississippi make the popular adoption of an amendment proposed by initiative petition easier than the popular adoption of an amendment proposed by legislative action. In Arkansas and Mississippi an amendment proposed by the legislature requires a majority of all votes cast at the election; an amendment proposed by popular petition requires merely a majority of the votes cast upon the question. In Nebraska an amendment proposed by legislative action requires a majority of all votes cast at the election; an amendment proposed by popular petition, an affirmative vote equal to thirty-five per cent of the total vote cast at the election.

The use of the popular initiative for constitutional amendments upon certain subjects is prohibited by a number of detailed provisions in Massachusetts. Nebraska and Massachusetts prohibit the proposal of the same measure oftener than once in three years, and Oklahoma provides that a measure rejected under the initiative and referendum shall not be again submitted in less than three years by less than a twenty-five per cent petition.

Popular vote required for the adoption of amendments: The constitution of Illinois requires that a proposed amendment in order to be adopted shall receive the votes of a majority of the electors voting at a general election.

At least nine other states³ have requirements which either expressly or by interpretation require that a measure receive a majority of all votes cast at the election in which submitted, although in Alabama and Oklahoma amendments may be submitted at a special election,

³ Alabama, Arkansas, Indiana, Minnesota, Mississippi, Nebraska, Oklahoma, Tennessee, Wyoming. Attention should be called to the fact that in Arkansas and Mississippi a majority of those voting upon the question is sufficient to adopt an amendment proposed by a popular petition, and in Nebraska a thirty-five per cent affirmative vote is sufficient to adopt a proposal presented by a popular petition.

where of course the majority of those voting upon the question is substantially equivalent to a majority of those voting at the election. Constitutional amendments, however, must ordinarily be submitted at general elections, even where this is not expressly required, because of the almost prohibitive expense of a special election.

Rhode Island requires that proposed amendments shall be approved by three-fifths of the electors of the state present and voting thereon, and New Hampshire requires the approval of two-thirds of the qualified voters present and voting upon a proposal.

The Michigan constitution of 1908 authorized a limited use of the initiative for the proposal of constitutional amendments, and required that such a proposed amendment in order to be adopted should receive a majority of the votes cast upon its adoption or rejection, and the affirmative vote should not be less than one-third of the highest number of votes cast at the same election for any office. Nebraska provides with respect to initiated amendments that they shall be adopted by a majority of the votes cast thereon provided that the favorable vote shall constitute thirty-five per cent of the vote cast at the election. The first proposed amending clause of the New Mexico constitution required that proposed amendments be submitted at a general election and receive an affirmative vote equal to at least forty per cent of all votes cast in the state and in at least half of the counties. In the New York convention of 1894 it was proposed that an amendment should be adopted by either of the following methods: (1) by a majority of all the electors voting at a general election, or by the affirmative vote of a majority of the electors voting thereon, provided that two-thirds of all the electors voting at an election voted thereon, or (2) if submitted at a special election provided that the affirmative vote equal a majority of all the electors voting at the last preceding general election; or by a vote of those voting thereon provided the vote at the special election equal two-thirds of the vote at the last preceding general election.

IV. REVISION OF CONSTITUTION THROUGH CONVENTION.

In view of the fact that a number of states have no provisions regarding the assembling of constitutional conventions, but actually employ such a convention, and in further view of details existing in various states with respect to the convention, it is difficult to summarize briefly the different types of constitutional provisions with respect to this matter. A statement is given below which seeks to summarize in several groups the provisions with respect to this matter in the several states, but attention should be called to the fact that this statement does not attempt any precise logical arrangement of these states:

(1) State with provision for change only by means of a constitutional convention. New Hampshire. This state requires a popular vote to assemble a convention, and popular approval of the convention's work.

(2) States having no provisions for constitutional conventions: Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Rhode Island, Texas and Vermont. In a number of these states conventions have actually been assembled in the absence of constitutional provisions for such conventions, and the generally accepted view is that the legislature may provide for the calling of a convention, even though the constitution contains no provision with reference thereto. A Rhode Island opinion constitutes an exception to this statement. In Indiana a recent judicial decision takes the view that in the absence of constitutional provision the legislature may call a constitutional convention, but that the proposal for such a convention must first be submitted to popular vote.¹

(3) Provision merely authorizing legislature to call convention, without any limitations as to popular vote either for the calling of the convention or upon the work of the convention: Maine, Georgia.

(4) States which require the submission to the voters of the question of calling a constitutional convention. There are thirty-four states which now require such a submission: Alabama, Arizona, California, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

¹ Bennett v. Jackson, 186 Ind. 533 (1917).

(5) States authorizing conventions and requiring a popular vote to assemble a convention but not expressly requiring the submission of the work of the convention to popular vote: Alabama, Delaware, Florida, Iowa, Kentucky, Kansas, Minnesota, Nevada, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Virginia, Wisconsin. Generally, however, constitutions have been submitted both in the states having no constitutional provisions regarding conventions and in the states having no requirements for submission to popular vote.

(6) States expressly requiring a popular vote to assemble a convention and also expressly requiring submission of the work of the convention to a popular vote. Of these there are nineteen: Arizona, California, Colorado, Idaho, Illinois, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Utah, Washington, West Virginia, Wyoming.

(7) Those requiring a periodical submission of the question of holding a constitutional convention: New Hampshire (seven years), Iowa (ten years), Michigan (sixteen years), Maryland, New York, Ohio (twenty years). The constitutions of Iowa, New York, Michigan and Ohio also contain provisions permitting submission of the question at other times than the ten, sixteen and twenty year periods. The Oklahoma constitution leaves to legislative discretion as to when the question shall be submitted, but requires that it be submitted once in every twenty years.

(8) Constitutions whose provisions regarding a constitutional convention are made completely independent of any legislative action: New York, Michigan.

The popular vote required to authorize a convention varies. Seventeen states either expressly or impliedly require that the necessary vote shall be a majority of those cast upon the subject of holding a convention: Arizona, California, Colorado, Delaware, Florida, Missouri, Montana, New Hampshire, New York, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Virginia, West Virginia, Wisconsin; and Kentucky has a similar provision with the additional requirement that the total number of votes cast for the calling of a convention be equal to one-fourth of the number of votes cast at the preceding general election. Twelve states require that the proposal of a convention shall be approved by a majority of those voting at a general election: Idaho, Illinois, Kansas, Maryland, Minnesota, Nebraska, Nevada, South Carolina, South Dakota, Utah, Washington, Wyoming. Alabama and Tennessee require a majority of the votes cast in the election in which a proposal is submitted, but permit such submission to be made at either a general or special election. Michigan requires a majority vote of electors qualified to vote for members of the legislature. The vote upon the question of holding a constitutional convention may also be taken at special elections in Missouri, Montana, Oklahoma, Virginia and West Virginia.

Upon the question of adopting or rejecting the work of a constitutional convention, Arizona, Michigan, Maryland, Nebraska, New

York, Ohio and Oklahoma require merely a majority of those voting upon the question of adoption or rejection. California, Colorado, Illinois, Missouri, Montana, and Utah require a majority of all persons voting at an election, but California expressly requires that such submission be at a special election, and Illinois and some other states permit submission either at a general or a special election.

Constitutions vary greatly in the extent to which they prescribe details regarding the composition and election of delegates to constitutional conventions. The constitution of Missouri makes the assembling of a convention independent of legislative action after the people have voted (upon legislative authorization) that a convention shall be held. The New York constitution of 1894 and the Michigan constitution of 1908 make a convention completely independent of legislative action, provided one is assembled as a result of the periodical votes required to be had upon the subject in these states. This independence of the convention was provided for first in New York because of the fact that a popular vote in favor of a constitutional convention was had in New York in 1886, but because of political differences, legislative provision for such convention was not made promptly and the convention did not actually assemble until 1894.

In some states which have adopted the popular initiative, the initiative provisions are sufficiently broad to permit of being used for the purpose of initiating a proposal for the holding of a constitutional convention. A power by initiative petition to force a vote upon the holding of a constitutional convention is not expressly found in any constitutional provision and results from implication, so that it is difficult to say in what states the popular initiative may be so used. However, the constitutional provisions for the popular initiative in Arizona, Michigan, Maine, Oregon, Missouri and Oklahoma seem to include a power to initiate a proposal for the holding of a constitutional convention.

V. ANALYSIS AND CONCLUSIONS.

Attention has already been called to the fact that in a group of states a majority of all of those voting at the election is required to adopt a constitutional amendment. These states are: Alabama, Arkansas, Illinois, Indiana, Minnesota, Mississippi, Nebraska, Oklahoma, Tennessee and Wyoming. It should again be repeated, however, that in Arkansas and Mississippi an amendment initiated by popular petition may be adopted by a majority voting thereon, and in Nebraska an amendment initiated by popular petition may be approved by an affirmative vote of thirty-five per cent of those voting in the election.

In the states just enumerated the amendment of constitutions has been particularly difficult, and this is especially true where the requirement of such a popular majority has coincided with other types of limitations upon the amendment of the constitution, as in Indiana and Illinois. In Illinois there have been relatively few votes upon constitutional amendments, and therefore relatively few rejections because of the great difficulty in proposing measures in the first place.

The requirement that a majority voting at the election shall vote in favor of a proposition in effect provides that all abstinence from voting shall be treated as negative voting, and it has often proven impossible to obtain even upon important questions an affirmative majority of the total vote cast in general elections. In states requiring a majority of those voting at the election, it has not been uncommon to submit a proposed amendment at frequent intervals in an effort to obtain the required majority. In Indiana a proposal permitting the legislature to prescribe qualifications for admission to the bar was submitted to the people in 1900, 1906 and 1910. Upon the first submission nearly sixty per cent of the voters expressed themselves either one way or the other upon this proposal, but in subsequent votes very few voters expressed themselves, apparently because of the feeling that voting upon constitutional amendments is a waste of time in that state.

A Minnesota proposal concerning the investment of school funds to which there was no strong opposition was submitted at three successive elections (1900, 1902 and 1904) before it received the required vote. Minnesota has had a somewhat similar experience with other proposals. In the Minnesota elections of 1912, 1914 and 1916 a number of proposed constitutional amendments failed of adoption, although some of those which failed in each of these elections received very nearly half of the total vote at the election. The same situation has presented itself in the other states having this requirement. In Oklahoma the constitution permits the submission of proposed amend-

ments at special elections, and a special election has been resorted to in at least one case, because at such an election the majority of those voting at the election is of course substantially equivalent to a majority of those voting upon the measure.

The great difficulty of obtaining for a proposed amendment a majority of all votes cast for the leading candidates at the same election has led several states in this group to devise methods of evading or avoiding the difficulty presented by their constitutional provisions.

The Alabama constitution of 1875 required that proposed amendments be submitted at a general election, and that in order to be adopted they should receive the vote of "a majority of all the qualified electors of the state who vote for representatives". The legislature in submitting a proposed amendment to the people in 1898 provided that the ballot should have printed on it the words "For Birmingham Amendment" and that "any elector desiring to vote for said amendment shall leave such words intact upon his ballot and any elector desiring to vote against such amendment shall evidence his intention to so vote by erasing or striking out said words with pen or pencil. The leaving of said words upon the ballot shall be taken as a favorable vote, and the erasure or striking out of said words as aforesaid shall be taken as an adverse vote upon said amendment". Under this provision the amendment was carried.¹

Such a plan can not be employed under the Alabama constitution of 1901. Under the Alabama plan just referred to, inaction by the voter was counted as an affirmative vote, whereas the constitutional provision without such an arrangement counts inaction in the negative. A similar ballot was employed in New Jersey in 1897.

A Nebraska statute in 1901 provided that "a state convention of any political party may take action upon any constitutional amendment which is to be voted upon at the following election, and said convention may declare for or against such amendment, and such declaration shall be considered as a portion of their ticket. . ." Where a political party endorsed a proposed amendment, such endorsement was to be printed as a portion of the party ticket, and a straight party vote was counted for the amendment; and in the same manner if the party action were against the amendment a straight party vote would be counted against such amendment. In enacting a mandatory direct primary law in 1907 the Nebraska law required party action to be expressed upon proposed amendments. The Nebraska plan was copied by Ohio in 1902, and the Ohio law continued in force until 1908, when it was repealed for political reasons. However, in order to obtain a majority of the votes at the election upon the calling of a constitutional convention in 1910, Ohio adopted the same plan. Indiana has also provided for the use of this plan in certain cases.

What the Nebraska plan does is practically what was done in the state of Illinois before the official ballot act of 1891. Party endorsements were had and the party endorsement printed as a part of the straight party ticket. Voting the party ticket then automatically

¹ May & Thomas Hardware Co. v. Birmingham, 123 Ala. 306 (1908).

casts a vote upon the proposal, and all voters voting such a ticket are counted in accordance with their party's action.

Such a plan is of course merely a subterfuge which results in the counting in the affirmative rather than in the negative of those who will not or do not take sufficient interest to vote upon a measure, provided the party has endorsed the measure.

Such a plan is possible under the present Illinois constitution, but it seems clearly more desirable to adopt some requirement of a popular majority that can actually be made effective, than to indulge in subterfuges for the purpose of counting an affirmative majority when none actually exists.

The experience of Illinois seems to indicate that there is no material difficulty in obtaining an affirmative vote upon a measure of forty per cent of those voting for candidates, although some questions have occasionally not received so large a vote.

If proposed amendments are to be submitted at a general election and some proportion of the total vote at the election is to be required, it would be unwise to adopt a plan of requiring that a certain percentage (say two-thirds or seventy per cent) shall have voted upon the question. It may be that upon a proposal there is practically no negative vote, but an affirmative vote equal to one-half of the total vote cast at the election. The total vote both for and against may not equal two-third or seventy per cent but the popular will has been clearly expressed by a majority of the total vote at the election. If a plan is to be adopted it should be that of a proportion between the affirmative vote and the total vote cast. So, for example, it might be required that a measure should receive a majority of the total vote cast upon its adoption or rejection, provided such majority equal forty per cent of the total vote cast in the election.

Use of the Initiative: Attention has already been called to the fact that in fourteen states the popular initiative may be used for constitutional amendments. In the states which permit the use of this institution 160 amendments have been proposed by a popular petition and of these 58 were adopted, that is a percentage of 36.25. In these same states within the same period 185 constitutional amendments were proposed by the legislature of which 81 were adopted, that is, a percentage of 43.78.

Relation between the constitution and statutes: To a large extent the distinction in substance between state constitutions and state statutes has disappeared through the practice of embodying detailed legislative enactments into the constitutions. Of course it is possible to say that detailed provisions devised to meet temporary needs are out of place in a constitution and should not be put there at all. The fact remains however that most constitutions do contain detailed pro-

visions. So long as constitutions are filled with matters of legislative detail, which must necessarily be subject to frequent change, a constitution which does not take this fact into consideration and make provision for such change, is defective.

Of course, even matters of importance, perhaps properly placed in a constitution at one time, do require change, and an amending clause should be so adjusted as to permit change in such matters. However, the incorporation into a constitution of a large amount of legislative detail makes essential an amending process which may be almost as easy as the process for the enactment of ordinary legislation.

The increasing detail in state constitution has been largely responsible for the disappearance of the distinction in form of enactment between statutes and constitutions in a number of states. In 1776 and for some time thereafter a relatively slight difference existed between the forms of constitutional and statutory enactment. The distinction became much clearer in later years, and toward the middle of the nineteenth century we have a well defined notion that state constitutions should not be easily subject to change. In fact this nation went much too far and resulted in the tying up of constitutional detail in such a manner as seriously to hamper further progress.

More recently, and particularly during the past twenty years, there has been a tendency to weaken quite materially the distinction in form of enactment between constitutions and statutes. This distinction in a number of states has disappeared because of the increased popular participation in legislation through the referendum. In the earlier period the most fundamental distinction between statutes and constitutional amendments was that amendments were required to be voted upon by the people, while statutes were infrequently submitted to a popular referendum. Twenty states now have constitutional provisions for an initiative and referendum upon ordinary legislation, and two states a provision for the referendum upon ordinary legislation. The constitutions of Oregon, Nevada, Missouri, Arkansas, Colorado and Mississippi, in their provisions for an initiative and referendum, place the enactment of statutes through these institutions upon precisely the same basis as the adoption of constitutional amendments, and California makes very little distinction between the two. In seven states which have the initiative and referendum, distinctions are made between the use of the initiative for constitutional amendments and its use for ordinary legislation.²

In state constitutional development in this country two alternatives are possible:

(a) That of practically abolishing the distinction in content between the state constitution and ordinary legislation, placing all desired detail in the constitution, and making the constitution substantially as easy to change as is an act of the legislature.

(b) The embodying into the constitution of only matters of more distinct and permanent importance, retaining some distinction in form of enactment between the constitution and statutes. Of course, even under this latter alternative a relatively easy method of constitutional

² Arizona, Massachusetts, Michigan, Nebraska, North Dakota, Ohio, Oklahoma.

amendment may be desirable, but the amending methods need not be so easy as under the first plan.

It may, therefore, be said that the determination of the type of amending clause rests primarily upon the determination as to what type of constitution is to be adopted. There is a distinct advantage in retaining the distinction between constitutions and statutes, and under our constitutional provisions in this country (except in Delaware) a popular vote is necessary in practically all cases for constitutional change. To increase the detail in the constitution, and make the constitution subject to alteration only upon a popular vote will, therefore, increase the number of measures upon which the people must be asked to express themselves, and whatever may be said in favor of a power in the people (through popular petition) to compel the submission of legislative or other proposals, there is little to be said in favor of a constitutional compulsion requiring the submission to the people of numerous matters of relatively small importance.

Conclusion: In the State of Illinois the present amending method is generally recognized as too difficult. In 1892 and 1896 proposals for the alteration of the amending clause were submitted to a popular vote, and the vote upon these proposals will be found upon page 180 of this pamphlet. One of the proposals was rejected by virtue of an unfavorable popular majority; the other failed because of the small amount of popular vote upon it. Reference should again be made to the fact that these proposals were submitted in a period when the ballot form made it difficult for the people to vote upon a proposed constitutional amendment. The text of these two rejected amendments is printed in the appendix to this pamphlet.

Attention should again be called to the fact that in this and other states there are two amending or revising processes for constitutional change. One of these processes is cumbersome and difficult of operation, and should be reserved only for extraordinary occasions. The other, as it now exists in Illinois is also difficult of operation, but the simpler method of constitutional change should be relatively easy of operation and should be employed when it is necessary to make specific or relatively minor changes in the constitutional text. In framing amending clauses for a future constitution, particular attention should be directed to the harmony of these two types of provisions.

Recently there has been a tendency to use constitutional conventions for the purpose of proposing a series of specific constitutional amendments, and in several cases conventions have submitted a number of proposed amendments rather than a revised constitution. The Ohio convention of 1912 submitted forty-two proposed amendments to the people. All constitutional conventions in New Hampshire since 1792 have submitted a series of proposals each of which might be separately accepted or rejected by the voters. The Massachusetts conventions of 1820, 1853 and 1917-19, each submitted a series of pro-

posed amendments. The convention of 1917-19 submitted twenty-two amendments all of which were adopted. A convention continues to be needed, however, for the periodical re-examination of a constitution, and if the changes to be recommended are numerous, those not of a controversial character may more properly be submitted in the form of a revised constitution, for to submit each change separately (when the matter is one over which there is no controversy) is to burden the voter unnecessarily.

Attention should also be called to the fact that the type of amending clause to be placed in a constitution depends to a large extent upon the type of constitution which is to be adopted. Detail in a constitution is undesirable, but detail in a constitution is all the more undesirable if it is coupled with an amending clause which makes the amendment of such detail substantially impossible.

It is difficult to indicate constitutional provisions from other states which are satisfactory for adoption in Illinois, and this difficulty is accentuated by the fact that no provision can be suggested as desirable unless it is first known what type of constitution is to be in existence, and how much detail is likely to be in such a constitution. The New York and Michigan plans with respect to a constitutional convention have distinct advantages, for in many states difficulties have presented themselves through making the assembling a constitutional convention dependent upon legislative action.

In an appendix to this study are printed the rejected amendments of 1892 and 1894, the proposed Chicago Bar Association amendment to the amending clause, the text of the public policy questions of November, 1919, the text of a proposal by the Chicago Woman's Club, and the full text of the amending clause of the Michigan constitution.

The appendix also includes a tentative draft of a plan for the combination of legislative proposal and popular initiation of amendments. This draft combines elements of rejected proposals in Wisconsin and Illinois, and is presented merely in order that the various phases of the subject may be put in concrete form. For the indirect initiation of constitutional amendments, the Wisconsin plan proceeds upon the assumption that there will be no difficulty about introducing a proposed amendment in the general assembly. A petition for the introduction of a proposed amendment seems unnecessary under such a plan, although, if it were desired, the two methods of proposal could be adopted. Other types of the initiative in use for the proposal of constitutional amendments will be found in the appendix to Bulletin No. 2 on the initiative, referendum and recall.

APPENDIX.

1. The Illinois Constitution of 1870, Article XIV :

Sec. 1. Whenever two-thirds of the members of each house of the General Assembly shall, by a vote entered upon the journals thereof, concur that a convention is necessary to revise, alter or amend the Constitution, the question shall be submitted to the electors at the next general election. If a majority voting at the election vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of double the number of members of the Senate, to be elected in the same manner, at the same places and in the same districts. The General Assembly shall, in the Act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the convention in the performance of its duties. Before proceeding, the members shall take an oath to support the Constitution of the United States and the State of Illinois, and to faithfully discharge their duties as members of the convention. The qualification of members shall be the same as that of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the General Assembly. Said convention shall meet within three months after such election and prepare such revision, alteration or amendments of the Constitution as shall be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two or more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendments shall take effect.

Sec. 2. Amendments to this Constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this State for adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this Constitution. But the General Assembly shall have no power to propose amendments to more than one article of this Constitution at the same session nor to the same article oftener than once in four years.

2. Chicago Bar Association Amendment:

Amendments to this Constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and said amendments shall be submitted to the electors of this state for adoption or rejection, at the next election of members of the General Assembly in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this constitution. But the General Assembly shall have no power to propose amendments to more than five articles of the constitution at the same session.

3. Public Policy Questions, Nos. 1 and 2, submitted to the electors November 4, 1919:

"Question No. 1—Shall the members of the Fifth Constitutional Convention be instructed to submit a proposal for the Initiative and Referendum; the term Initiative as herein used, meaning the power to bring proposed laws and Constitutional Amendments to popular vote, at any regular election, by petition of 100,000 electors at large, all measures so submitted to become laws when approved by a majority of those voting thereon; the term Referendum, as herein used, meaning the power to suspend specified act or acts of the legislature, by petition of 50,000 electors at large, until such act or acts shall have been referred to popular vote and approved by a majority of those voting thereon; said powers of the Initiative and Referendum also to be understood as being extended by the Constitution to the electors of every municipality and other political subdivision or district of the State, and to apply to all local, special and municipal legislation, in or for their respective municipalities and sub-divisions or districts?

Question No. 2—Shall the members of the Fifth Constitutional Convention be instructed to submit the proposal for the Initiative and Referendum, as defined in Question No. 1, for a separate vote, in such manner that said proposal, if approved by a majority of those voting thereon, shall take effect, either as part of a new constitution or as an amendment of Article 4, Section 1, of the present constitution?"

4. Proposal of the Chicago Woman's Club:¹

"1. Whenever [two-thirds] (a majority) of the members of each house of the General Assembly shall, by a vote entered upon the

¹ Words in present Article XIV to be deleted are in brackets. Words to be inserted are in parentheses.

journals thereof, concur that a convention is necessary to revise, alter, or amend the Constitution, the question shall be submitted to the electors at the next general election. If a majority voting [at the election] (thereon) vote for a convention, the General Assembly shall, at the next session, provide for a convention, to consist of [double] the (same) number of members [of] (as) the Senate, to be elected [in the same manner] (at the same time), at the same places, and in the same districts. The General Assembly shall, in the Act calling the convention, designate the day, hour, and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the expenses necessarily incurred by the convention in the performance of its duties. Before proceeding, the members shall take an oath to support the Constitution of the United States and the State of Illinois, and to faithfully discharge their duties as members of the convention. The qualification of members shall be the same as that of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the General Assembly. Said convention shall meet within three months after such election and prepare such revision, alteration, or amendments of the Constitution as shall be deemed necessary (which shall be published by the Secretary of State in full at least three months before the election at which they are to be voted upon.) [which] (They) shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two or more than six months after the adjournment thereof; and [unless] (each such revision, alteration, or amendment) so submitted and approved by a majority of the electors voting [at the election, no such revision, alteration or amendments shall take effect.] (thereon, shall become a part of this constitution).

2. Amendments to this constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by [two-thirds] (a majority) of all the members elected to each of the two houses, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this state for adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall be published (by the Secretary of State) in full at least three months preceding the election, and if a majority of the electors voting [at said election] (on any amendment) shall vote for [the proposed] (that) amendment, [they] (it) shall become a part of this constitution. But the General Assembly shall have no power to propose amendments [to more than one article of this constitution at the same session nor] to the same article oftener than once in four years.

(3. Amendments to this constitution may also be proposed by petition of one-tenth of the qualified voters of this State. Every such petition shall include the full text of the amendment so proposed and be signed by at least one-tenth as many qualified voters of the State as voted at the preceding general election for State Treasurer. In-

initiative petitions proposing an amendment to this constitution shall be filed with the Secretary of State at least four months before the election of members of the General Assembly at which election such proposed amendment is to be voted upon. Upon receipt of such petition by the Secretary of State, he shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified electors, and if the same has been so signed, the proposed amendment shall be published by the Secretary of State in full at least three months preceding the election and submitted to the electors of this State for adoption or rejection, and if a majority of the electors voting on such an amendment, shall vote for that amendment, it shall become a part of this constitution.)”

5. Combination of the initiative and the legislative proposal of amendments:²

Section 1. *At the general election to be held in the year 1938, and every twentieth year thereafter, and also at such times as the General Assembly, by a vote of two-thirds of all the members elected to each of the two houses, with the yeas and nays of each house entered upon the journals thereof, shall provide, the question of holding a convention to revise, alter or amend the constitution shall be submitted to the electors of the state. A convention shall be held if a majority voting upon the question vote for a convention, provided such majority be not less than one-third of the total number voting at the election if it is a general election, or if it is a special election provided such majority be not less than one-third of the vote cast at the last preceding general election. If the electors shall decide in favor of a convention, the General Assembly shall at the next session provide for a convention to consist of double the number of members of the Senate, to be elected at the same places and in the same districts. The General Assembly shall, in the act calling the convention, designate the day, hour and place of its meeting, fix the pay of its members, and provide for the payment of the same together with the expenses necessarily incurred by the convention in the performance of its duties. Before proceeding, the members shall take an oath to support the constitutions of the United States and of the State of Illinois, and to discharge faithfully their duties as members of the convention. The qualifications of members shall be the same as that of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the General Assembly. Said convention shall meet within three months after such election, and prepare such revision, alteration or amendments of the constitution as shall be deemed necessary, which shall be published in full within two weeks after the adjournment of the convention and shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose not less than two nor more than six months*

² New matter is italicized. That not italicized is present language of Illinois Constitution.

after the adjournment thereof. Such revision, alteration, or amendments shall be adopted upon approval by a majority of the electors voting thereon, provided such majority be not less than one-third of the total number voting at the election if it is a general election or if it is a special election provided such majority be not less than one-third of the total vote cast at the last preceding general election; and any revision, alteration or amendments so adopted shall take effect on the first day of January next after such approval, unless another date shall be specified in the revision, alteration or amendment itself.

Section 2. Amendments to this constitution may be proposed in either house of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon shall be entered in full on their respective journals.

A petition signed by qualified electors of the state equal to ten percentum of the votes cast for governor at the last preceding election (not more than one-half of whom shall be residents of any one county) may require the submission to the people of any amendment proposed in either house of the general assembly, either in its original form or with any amendments proposed in either house. However if such a proposed amendment shall be placed upon its final passage in each house and fails in either house to receive the affirmative votes of one-third of all members elected to such house it shall not be so submitted. The petition shall be filed with the secretary of state within six months after the adjournment of the General Assembly, and shall contain the full text of the proposed amendments whose submission is required. Petitions shall be verified by affidavits of those obtaining the signatures. The Governor, Attorney General and Secretary of State shall constitute a board to pass upon the sufficiency of petitions, and when a petition is approved by them its sufficiency shall not be questioned in any court. A finding of the board that a petition is not sufficient may be reviewed upon a petition for mandamus filed in the Supreme Court within thirty days. These provisions are self-executing, but the General Assembly may enact appropriate legislation regulating the verification of signatures, and other matters connected with the preparation and presentation of petitions.

Amendments proposed either by the General Assembly or as a result of popular petition in the manner provided above shall be submitted to the electors of this state for adoption or rejection at the next general election, unless the General Assembly by a vote of two-thirds of all the members elected to each of the two houses shall order a special election for that purpose. The proposed amendments shall be submitted in such manner as may be prescribed by law, and shall be published in full at least three months preceding the election. If a majority of the electors voting thereon shall vote for the proposed amendments, they shall become a part of this constitution, provided such majority be not less than one-third of the total number voting at the election if it is a general election, or if it is a special election, provided such majority be not less than one-third of the total vote cast at

the last preceding general election. When two or more amendments are submitted at the same election they shall be so submitted as to enable the electors to vote upon each amendment separately. Every amendment shall take effect on the first day of January next after its approval, unless another date shall be specified in the amendment itself. No amendment submitted to and approved by the people shall be held invalid if in its proposal and adoption there has been substantial compliance with the terms of this section.

6. Constitution of Michigan, Article XVII:

Section 1. Any amendment or amendments to this constitution may be proposed in the senate or house of representatives. If the same shall be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the journals, respectively, with the yeas and nays taken thereon; and the same shall be submitted to the electors at the next spring or autumn election thereafter, as the legislature shall direct; and, if a majority of electors qualified to vote for members of the legislature voting thereon shall ratify and approve such amendment or amendments, the same shall become part of the constitution.

Sec. 2. Amendments may also be proposed to this constitution by petition of the qualified voters of this state. Every such petition shall include the full text of the amendment so proposed and be signed by not less than ten per cent of the legal voters of the state. Initiative petitions proposing an amendment to this constitution shall be filed with the secretary of state at least four months before the election at which such proposed amendment is to be voted upon. Upon receipt of such petition by the secretary of state, he shall canvass the same to ascertain if such petition has been signed by the requisite number of qualified electors, and if the same has been so signed, the proposed amendment shall be submitted to the electors at the next regular election at which any state officer is to be elected. Any constitutional amendment initiated by the people as herein provided, shall take effect and become a part of the constitution if the same shall be approved by a majority of the electors voting thereon and not otherwise. Every amendment shall take effect thirty days after the election at which it is approved. The total number of votes cast for governor at the regular election last preceding the filing of any petition proposing an amendment to the constitution, shall be the basis upon which the number of legal voters necessary to sign such a petition shall be computed. The secretary of state shall submit all proposed amendments to the constitution initiated by the people for the adoption or rejection in compliance herewith. The petition shall consist of sheets in such form and having printed or written at the top thereof such heading as shall be designated or prescribed by the Secretary of State. Such petition shall be signed by qualified voters in person only, with the residence address of such persons and the date of signing the same. To each of such petitions, which may

consist of one or more sheets, shall be attached the affidavit of the elector circulating the same, stating that each signature thereto is the genuine signature of the person signing the same, and that to the best knowledge and belief of the affiant each person signing the petition was at the time of signing a qualified elector. Such petition so verified shall be *prima facie* evidence that the signatures thereon are genuine, and that the persons signing the same are qualified electors. The text of all amendments to be submitted shall be published as constitutional amendments are now required to be published. (Amendment ratified at April election, 1913).

Sec. 3. All proposed amendments to the constitution submitted to the electors shall be published in full, with any existing provisions of the constitution which would be altered or abrogated thereby, and a copy thereof shall be posted at each registration and election place. Proposed amendments shall also be printed together with any other special questions to be submitted at such election in full on a single ballot separate from the ballot containing the names of the candidates or nominees for public office. (Amendment ratified at November election, 1918).

Sec. 4. At the general election to be held in the year nineteen hundred twenty-six, in each sixteenth year thereafter and at such other times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature. In case a majority of such electors voting at such election shall decide in favor of a convention for such purpose, at the next biennial spring election the electors of each senatorial district of the state as then organized shall elect three delegates. The delegates so elected shall convene at the state capitol on the first Tuesday in September next succeeding such election, and shall continue their sessions until the business of the convention shall be completed. A majority of the delegates elected shall constitute a quorum for the transaction of business. The convention shall choose its own officers, determine the rules of its proceedings and judge of the qualifications, elections and returns of its members. In case of a vacancy by death, resignation or otherwise, of any delegate, such vacancy shall be filled by appointment by the governor of a qualified resident of the same district. The convention shall have power to appoint such officers, employes and assistants as it may deem necessary and to fix their compensation, and to provide for the printing and distribution of its documents, journals and proceedings. Each delegate shall receive for his services the sum of one thousand dollars and the same mileage as shall then be payable to members of the legislature, but such compensation may be increased by law. No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner provided by such convention on the first Monday in April following the final adjourn-

ment of the convention ; but, in case an interval of at least ninety days shall not intervene between such final adjournment and the date of such election, then it shall be submitted at the next general election. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon such constitution or amendments shall take effect on the first day of January following the approval thereof.

CONSTITUTIONAL CONVENTION

BULLETIN No. 4

State and Local Finance

Taxation, Appropriation and Budget
Methods; State and Municipal
Debts



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I. SUMMARY

Taxation. The first state constitution of Illinois had few provisions relating to taxation and finance. The article on the legislative department contained several brief sections relating to revenue bills and appropriations. A provision in the Bill of Rights laid down the uniform rule of taxation more definitely than in any previous state constitution. In practice the tax laws for twenty years after 1818 provided a crude system of classification and segregation, but a law of 1839 established the general property tax in full force.

In the state constitution of 1848 the financial provisions were much more detailed. The uniform rule of taxation was continued, with additional provisions relating to poll tax, special taxes, exemptions, tax sales and redemptions, local taxation, state appropriations and restrictions on state debt. The township organization law of 1851 and a new revenue law of 1853 decentralized tax administration, and amplified the rules for the assessment of property with specific reference to intangible property.

In the constitution of 1870 further details were added. Provisions relating to appropriations and state debt were made more specific. The article on Revenue was increased from six to twelve sections, with additional provisions as to special taxes, exemptions, limitations on municipal debts and county taxes, and for special assessments and special taxation for local improvements. Separate sections prohibit municipal aid to private corporations and state aid for railroads and canals.

Constitutional amendments have authorized special assessments for drainage districts, the Governor's veto of items in appropriation bills and additional debt for the city of Chicago and for a deep waterway.

A new revenue law of 1872 further elaborated the rules relating to the assessment of property for taxation and reorganized the State Board of Equalization (established in 1867). Numerous amendments and additional tax laws have since been passed, providing for an inheritance tax, increasing the powers of county officers in the work of assessment, recognizing the practice of undervaluation and changing the basis of assessment, limiting local tax rates, establishing a state tax commission, and increasing the license taxes on corporations and insurance companies.

Two early decisions of the Supreme Court of Illinois upholding tax laws indicated a liberal construction of the rule of uniformity in taxation. But in later decisions the uniform general property tax has been more strictly enforced, not alone as to all forms of tangible property but also as to intangible wealth, such as stocks and bonds, mortgages and other securities and credits.

The inheritance tax has been upheld; and also special taxes authorized by section 1 of Article IX, where imposed in addition to the general property tax; but special taxes to supersede taxes on personal property have been held to be invalid.

The constitutional enumeration of certain classes of property which may be exempted from taxation has been held to be an exclusion of all other subjects of taxation and a limitation on the power of the General Assembly to grant other exemptions.

Provisions for vesting local authorities with power to tax for corporate purposes have been held to limit the grant of local taxing powers to locally elected municipal officers, or officers appointed in a manner to which the people to be taxed have given their assent.

The provision for special assessments by "cities, towns and villages" was held to prevent the grant of authority to levy special assessments by drainage districts; a decision which led to the adoption of a constitutional amendment in 1878 authorizing special assessments by such districts. But it has been held that park boards may be vested with power to make local improvements by special assessments.

In connection with the provisions as to local improvements, the Supreme Court has held that such improvements involve the idea of permanence; that special assessments and special taxation may not be combined for the same improvement; and that each improvement must be wholly within the limits and under the control of one municipality.

Criticism of the present system of taxation in Illinois has been long continued and widespread, relating to defects in administration, failure to meet its own standard of uniformity, and injustice in the theory of the general property tax. More specifically, complaints are made of the general undervaluation of property, great inequalities in assessments, and the escape from taxation of large amounts of property.

A comparison of assessed valuations with the census estimates of the true value of tangible property shows a steady decrease in the percentage of true value assessed from 1850 to 1890; and while there was an improvement for a time after 1898, there has been a renewed decline since 1904, and the "full value" assessments are less than half of the census estimates of true value.

It is further clear that there is a great degree of inequality in the degree of undervaluation as between classes of property, local districts and taxpayers. Such inequalities appear even in the assessment of real estate, as between different counties, and as between farm lands and urban lots. So long as real estate is thus underassessed, the full assessment of intangible personalty can hardly be expected.

More striking are the variations in the assessment of personal property. The total assessments of all personal property in 1912 were only 31 per cent of the census estimates of the true value of tangible personal property, as compared with 54 per cent for real estate. The assessments for the various items of enumerated personal property show the most absurd and whimsical variations, both as to the number and value of particular items in different taxing

districts. It seems evident that in practice large amounts of such property are not included, at the discretion of the various local assessors.

Improvement in the assessment of real estate and of some kinds of tangible personal property may be secured by more efficient methods of administration, under the new State Tax Commission. But to exempt a minimum of household furniture, or to provide special methods for taxing particular classes of such property will require changes in the present constitutional provisions.

The most serious evasions of the present tax laws, however, are in connection with the assessment of intangible wealth, such as money, credits, stocks and bonds. A comparison of the assessments in Cook county and other counties shows that the assessments for most of the items of tangible and intangible wealth for Cook county is only a small fraction of that for the rest of the State. On the other hand about half of the total assessment for personal property in Cook county is under the heading "all other property", which probably includes lump sum assessments made without attempting to show the various items in the schedule. A comparison of the assessments for money of other than bankers etc., with individual bank deposits as shown in bank reports, and of assessments for credits of other than bankers, etc., with estimates of the true value of taxable mortgages indicates that such money and credits have been assessed at not more than one third as much of their true value as real estate, and in recent years at not more than one fifth as much as real estate.

This does not mean that there is a general undervaluation of intangible wealth in this proportion. Some intangible property is assessed on about the same basis as real estate, and some (in the case of estates in trust or in probate) may be assessed at its true value, and hence at a relatively much higher rate than is real estate. On the other hand a large proportion of intangible wealth escapes assessment and taxation altogether.

These difficulties are not likely to be overcome by any changes in methods of administration. The experience of other states confirms that of Illinois as to the impossibility of securing the full assessment of intangible property under the general property tax; while in a number of other states special taxes on mortgages and intangible property or on incomes have secured larger revenues from intangible property than the general property tax.

Some use has been made of special taxes in Illinois; but such taxes will not be utilized fully so long as they must be imposed in addition to the general property tax. To use such special taxes as a partial substitute for the general property tax will require changes in the present constitutional provisions for the uniform taxation of all property.

Some difficulties and problems have been raised by the constitutional provisions relating to special assessments and special taxation for local improvements, under the decisions of the Supreme Court. Changes in the constitutional provisions will be needed, if it is desired

to extend the use of special assessments and special taxation to other municipal corporations than cities, towns, villages, park districts and drainage districts; to permit their use in other than permanent improvements; to allow special assessments and special taxation to be combined in the same improvement; or to authorize such methods to be used for improvements to be carried out jointly by two or more municipal corporations.

The requirement of uniformity of taxation within each taxing district has also caused difficulties; and in connection with the limitations on municipal debts has forced the multiplication of overlapping local districts, and prevented the development of a satisfactory system of local government.

The constitutional provisions relating to tax sales and redemptions appear to prevent legislation to eliminate professional tax buyers.

In addition to complaints and criticisms of the Illinois tax system by private individuals and associations, there have also been similar criticisms by public authorities. A considerable number of proposed constitutional amendments have been introduced in the General Assembly. Most of the Governors of Illinois have called attention to defects in the methods of taxation and have strongly urged changes. A revenue commission appointed in 1885 reported a year later, calling attention to numerous defects, and recommending a new revenue law with important changes in methods of taxation and administration. The State Bureau of Labor Statistics made two extended reports on taxation, one in 1888 on mortgages, and a more comprehensive investigation in 1894 with recommendation for far-reaching statutory and constitutional changes.

A Special Tax Commission authorized in 1909 reported two years later, recommending a State Tax Commission and a system of county assessors, and also a constitutional amendment to authorize classification of personal property. The principle of classification was indorsed by a public policy vote in 1912, by 541,189 to 187,467.

The amendment proposed by the Special Tax Commission was submitted by the General Assembly in 1915 and voted on in 1916. It received 656,298 votes, to 295,782 against; but was held by the Supreme Court to have failed of adoption, as the affirmative vote was not a majority of the total vote cast at the election.

The uniform general property tax treats all property alike and proved satisfactory at the time it was first adopted in this country, because at that time there were no great variations in classes of property to be taxed. With the great development of intangible wealth, this tax system has ceased to work efficiently, and there has been a steady tendency in the states away from the requirement of uniformity in taxation. This tendency has been most decided since 1900, and has resulted in the adoption of numerous constitutional provisions, either permitting classification of property or authorizing special treatment of incomes, mortgages, etc. The experience of other states under more flexible constitutional provisions indicates that more revenue is derived from intangible wealth by other methods than under the uniform gen-

eral property tax. As has been remarked by the United States Supreme Court, the constitutional rule of uniformity is now not a rule of equality but rather one of inequality.

Budget methods. Until recently little attention has been paid in this country to financing state governments, and the planning both of state appropriations and of the state revenue has been largely a hap-hazard matter. However, thirty-nine states (including Illinois) now have some provision for a budget, although but three have detailed provisions about this matter in their constitution. The Illinois statutory provisions for a budget, adopted in 1917, have been used successfully in 1919, and have been copied in several other states.

There are, however, a number of detailed provisions in the present constitution regarding appropriation methods, and some of these provisions now make difficulty. Detailed budgetary provisions in a state constitution are unnecessary, but care should be taken to make sure that existing constitutional provisions do not interfere with the adoption of a satisfactory state financial plan by the General Assembly.

State and Municipal Debts. Limitations upon state and municipal debts are found in practically all of the state constitutions. There has in recent years been a tendency to relax such limitations. This tendency has been a result of a desire to have governmental agencies undertake new projects, and state road building programs have been responsible for a number of constitutional changes.

The most striking development with respect to municipal debt limits has been the tendency, indicated particularly by provisions in Michigan, Ohio and New York to exempt income producing investments of cities from the strict limits imposed by the constitutions.

With respect to the Illinois debt limitations, two matters deserve special comment: (1) The Constitution of 1848 permitted a debt of \$50,000 to meet casual deficits; the Constitution of 1870 raised this amount to \$250,000. In view of present state expenditures, the question will present itself of still further increasing this amount. (2) The limitation upon municipal debt is one upon each separate municipal corporation, and has encouraged the practice of creating additional municipal corporations within a given area, in order to obtain in this way additional borrowing power.

II. HISTORICAL DEVELOPMENT IN ILLINOIS

Constitution of 1818. The first state constitution of Illinois had few provisions relating to taxation and finance. Article II on the legislative department contained the following:

"Section 20. No money shall be drawn from the treasury but in consequence of appropriations made by law."

"Section 21. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at the rising of each session of the General Assembly."

"Section 32. All bills for raising a revenue shall originate in the House of Representatives, subject, however, to amendment or rejection as in other cases."

More novel and of more importance was the following provision in the Bill of Rights, laying down the uniform rule of taxation:

"Section 20. That the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession."

No previous state constitution had contained so sweeping and positive a statement of the rule of uniformity in taxation; though provisions for proportionate taxation had been adopted in the first constitutions of Maryland (1776), Vermont (1777) and Massachusetts (1780).

In actual practice, however, the taxes then in use in Illinois, which continued for twenty years, were not based on a uniform system of valuation, but on a crude classification. There was a land tax, based on an arbitrary classification of lands, the proceeds of which were divided between the state and the counties, the state receiving the tax from lands owned by non-residents. There was also a state bank tax, and counties were authorized to levy taxes on a few specified items of tangible personal property. Early town charters provided for the taxation of town lots, exclusive of improvements; but later town taxes were imposed on real estate (including improvements), and still later on both real and personal property.

The tax law of 1839 established the general property tax in full force; providing for the assessment of real estate and for a long list of personal property items, including money actually loaned, stock of incorporated companies, and "all other description of personal property." The machinery of assessment was more fully developed by this law; and the different public authorities were authorized to levy taxes on the same assessed valuation.¹

¹ R. M. Haig; *History of the General Property Tax in Illinois*.

Constitution of 1848. In the constitution of 1848 more attention was given to problems of finance, including appropriations, debt limitation and taxation. Article III, on the legislative department included the following provisions:

"Section 22. Bills making appropriations for the pay of the members and officers of the General Assembly, and for the salaries of the officers of the government, shall not contain any provision on any other subject."

Section 26 contained the provisions of Sections 20 and 21 of Article II in the former constitution, with the additional clause: "And no person who has been or may be a collector or holder of public moneys, shall be eligible to a seat in either House of the General Assembly, nor be eligible to any office of profit or trust in this state, until such person shall have accounted for, and paid into the treasury all sums for which he may be accountable."

Section 37 required the General Assembly to "provide for all appropriations necessary for the ordinary and contingent expenses of the government until the adjournment of the next regular session, which shall not be increased without a two-thirds vote, nor exceed the revenues authorized. To meet casual deficits, debts up to \$50,000 were authorized; but no other debt should be contracted (except for repelling invasion, suppressing insurrection or defending the state in war) unless approved by the people at a general election, with a law for a tax for the payment of interest.

"Section 38. The credit of the state shall not, in any manner be given to or in aid of any individual, association or corporation."

The section requiring revenue bills to originate in the house of representatives was omitted.

In addition to these provisions, a new Article (IX) on Revenue was adopted dealing with the following subjects:

Section 1 authorized a poll tax. Section 2 repeated the rule of uniform taxation, with the addition of a clause relating to assessors and a clause authorizing taxes on an enumerated list of special objects.

Section 3 authorized the exemption from taxation of state and county property and property deemed necessary for school, religious and charitable purposes. Section 4 contained detailed provisions as to sales of property for unpaid taxes and for the redemption of property so sold. Section 5 authorized the corporate authorities of local districts to be vested with power to assess and collect taxes for corporate purposes, subject to the rule of uniformity. Section 6 provided that the specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other objects or subjects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution.

Under the township organization law of 1851, a system of town assessors and collectors was established in counties adopting the township system. A new revenue law of 1853 amplified the rules relating to the assessment of property, providing for a schedule of fourteen items of personal property, including intangible property such as moneys, credits, investments in bonds, stocks and joint stock companies.

Proposed Constitution of 1862. In the proposed constitution of 1862, the article on Revenue was continued, containing all the provisions in Article IX of the Constitution of 1848, and three new sections as follows:

Section 6 provided that all taxes should be collected by the same person. Section 8 required the General Assembly to provide that all taxes and assessments should be due and paid on a certain day. Section 9 provided that the General Assembly should levy a uniform tax on bank circulation.

In the article on the legislative department the financial provisions in the corresponding article in the constitution of 1848, were continued with some additions. Municipalities, as well as the state, were prohibited from loaning their credit or subscribing to the stock of corporations or associations; and the general assembly was prohibited from modifying the terms of the Illinois Central Railroad charter.²

Constitution of 1870. In the Constitutional Convention of 1869-70, provisions relating to taxation and finance were reported by four different committees,—legislative department, revenue, state and local indebtedness and municipal corporations. The main discussion took place in connection with sections relating to revenue from the Illinois Central Railroad and prohibiting municipal corporations from loaning their credit or subscribing to stock (both of which were submitted separately and adopted), and one authorizing special taxation for local improvements.

In the revised constitution there were a number of changes, some by omission of former provisions, and more by addition. In Article IV on the Legislative Department, provisions relating to appropriations and state debt were brought together in sections 16-21 and 33. Section 16 contained the provisions of section 22 of Article IV of the former constitution, with a new provision that: "The General Assembly shall make no appropriation of money out of the treasury in any private law."

Section 17 made some changes from Section 26 of Article III of the former constitution. An Auditor's warrant is required for drawing money from the Treasury; and a statement of money expended at the session of the General Assembly is required in place of the former "statement of the receipts and expenditure of the public money." The last clause in Section 26 relating to the ineligibility of defaulting officers was included in Section 4 of Article IV.

Section 18 made some changes from Section 37 of Article III of the former constitution. Appropriations by each General Assembly are to cover the necessary expenses "*until the expiration of the first fiscal quarter after the adjournment of the next regular session.*" The amount of state debt permitted to meet casual deficits was increased to \$250,000.³

² Proposed Constitution of 1862, Art. IV, Secs. 35, 38.

³ A provision requiring appropriations to be made by a general law was agreed to in Committee of the Whole, but was not reported to the Convention. Proceedings and Debates, I.

Section 19 (new) prohibits retrospective appropriations for services or claims under any agreement not authorized by law, except for expenditures incurred in suppressing insurrection or repelling invasion.

Section 20 extended the prohibition on loaning the credit of the state (Section 38, Article III in Constitution of 1848) to assuming the debts of any corporation, association or individual.

Section 21 (corresponding to Section 24 of Article III in Constitution of 1848) provides that the compensation of members of the General Assembly shall be prescribed by law, but no change may be made during their term; and limits other allowances to \$50 per session.

Section 33 of Article IV (new), limited appropriations for the new state house to a total of \$3,500,000 without a vote of the people.

Article IX on Revenue was increased from six to twelve sections. The changes made are noted in the following analysis:

Section 1 of the former article authorizing a poll tax was omitted.

Section 1 in the Constitution of 1870 corresponds to Section 2 of the former constitution, reaffirming the rule of uniformity and adding to the list of objects and subjects of special taxation—"liquor dealers, insurance, telegraph and express interests or business, vendors of patents and corporations owning or using franchises or privileges", with a further qualification that all such special taxes shall be "by general law, uniform as to the class upon which it operates".

Section 2 in the new constitution is the same as Section 6 in the constitution of 1848.

Section 3 added to authorized exemptions, property used exclusively for agricultural and horticultural societies and for cemetery purposes, required exemptions to be made by general law, and provided that: "In the assessment of real estate encumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property".

Sections 4 and 5 relating to tax sales and redemptions took the place of the more detailed provisions in section 4 of the former constitution.

Section 6 (new) prohibits the General Assembly from releasing local districts from state taxes, or any commutation for such taxes.

Section 7 (new) provides that "all taxes levied for state purposes shall be paid into the state treasury".

Section 8 (new) establishes a limitation on county taxes of 75 cents per \$100., except for debt existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

Sections 9 and 10 take the place of section 5 in the former constitution. The General Assembly is specifically authorized to vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contiguous property, or otherwise". The provision for corporate taxation under the uniform rule is extended to "all municipal corporations". The General Assembly is prohibited from imposing taxes on municipal corporations for corporate purposes; and private property is declared not liable for the debts of municipal corporations.

Section 11 (new) repeats with reference to municipal officers provisions of other parts of the constitution as to the ineligibility of defaulting officers, and prohibits the increase and decrease of compensation during the term of officers elected or appointed for a definite term.

Section 12 (new) establishes a limit to the debt of municipal corporations of five per cent of the assessed valuation of taxable property, and requires a tax to pay interest and the principal within twenty years, with exception for bonds voted by the people in pursuance of law prior to the adoption of this constitution.

In addition to the provisions in the main constitution, three other sections, separately submitted and all adopted, related to financial questions.

Section 1 provided that the contract liability of the Illinois Central Railroad Co. shall never be altered or remitted; and that the money derived from the company, after payment of the state debt, shall be applied to the ordinary expenses of the state.

Section 2 prohibited any municipal corporation from subscribing to stock or loaning its credit to railroad or private corporations, unless voted under authority of law before the adoption of the constitution.

Section 3 required a popular vote to authorize the sale or lease of the Illinois and Michigan Canal; and prohibited the loan of state credit or appropriations in aid of railroads or canals, except that surplus earnings of any canal or water power might be appropriated for its enlargement, maintenance or extension.

Amendments. By an amendment to Section 31 of Article IV, adopted in 1878, the corporate authorities of drainage districts may be vested with power to make special assessments on property benefited.

An amendment to Section 16 of Article V, adopted in 1884, extended the Governor's veto to items or sections of appropriation bills.

An amendment to Article IX, adopted in 1890, added section 13, authorizing the city of Chicago to issue \$5,000,000. in bonds on account of the World's Columbian Exposition.

An amendment to separate section 3, adopted in 1908 authorized the construction of a deep waterway from Lockport to Utica, and the issue of bonds not to exceed \$20,000,000 for such construction.

Revenue Legislation since 1870. A new revenue law was enacted in 1872, which still forms the basis of the present system of assessment and collection of taxes. This act further elaborated the rules for listing and valuing property, increasing the number of items of personal property required to be scheduled. It provided for the review and equalization of original local assessments by the county

board; and it reorganized the State Board of Equalization (established in 1867), and added to its authority that of assessing railroad property and the stock of Illinois corporations.

Numerous amendments to the act of 1872 and other laws relating to taxation, have been passed from time to time. The more important of these have been the following:

An Act of 1895 to tax gifts, legacies and inheritances, amended in 1909 and at other times.

An Act of 1898 making some important changes in the methods of assessing property, especially in Cook County. This act did away with town assessors and collectors in the city of Chicago, and provided a Cook County board of assessors and board of review; it increased the powers of all county treasurers as supervisors of assessments, and reorganized and increased the powers of county boards of review. It also recognized the practice of undervaluation in the assessment of property by providing that the taxable value should be one-fifth of the "full value".

An Act of 1901, (the Juul law) which has been frequently amended, established a general limitation on the aggregate tax rates, and for the reduction of rates over the limit.

An Act of 1909 provided for an increase in the taxable value of property from one-fifth to one-third of the full value. In 1919, a further increase to one-half was made. These changes were made to enlarge the borrowing power of municipalities under the constitutional debt limit; and in each case corresponding reductions were made in the authorized tax rates of local authorities.

An Act of 1917 abolished town collectors; and placed the collection of taxes entirely in the hands of the county treasurers.

Acts of 1919 abolished the large elective State Board of Equalization, and provided for a State Tax Commission of three members, appointed by the Governor; and established an increased scale of license taxes on corporations and insurance companies.

III. JUDICIAL DECISIONS ON TAXATION

Early cases. Two decisions of the Supreme Court of Illinois, under the rule of uniform taxation as laid down in the first state constitution, indicated a liberal construction of the rule.

In *Sawyer v. the City of Alton* (1841) it was held that the constitutional provision for uniformity did not prevent a poll or capitation tax or a law requiring labor service on roads.

"We are of opinion the framers of the constitution intended to direct a uniform mode of taxation on property, and not to prohibit any other species of taxation, but to leave the legislature the power to impose such other taxes as would be consonant to public justice, and as the circumstances of the county might require. They probably intended to prevent the imposition of an arbitrary tax on property, according to kind or quantity, and without reference to value. The inequality of that mode of taxation was the object to be avoided. We cannot believe they intended that all the public burdens should be borne by those having property in possession, wholly exempting the rest of the community who, by the same constitution were made secure in the exercise of the rights of suffrage, and all the immunities of the citizen."¹

In *Rinehart v. Schuyler, et. al.* (1845) it was held that the revenue laws from 1823 to 1829 were not unconstitutional because they provided for the classification of lands at specific valuations named in the law. It was maintained that the system of valuation and classification was the most equitable and convenient, and that a valuation of the lands by personal examination and inspection would not only have been inconvenient and expensive, but absolutely impracticable.²

But in later decisions the rule of uniformity has been more strictly enforced, and applied, not only as to all forms of tangible property, but also to intangible wealth in the form of stocks and bonds, mortgages and other securities, and credits.

Intangible property. The taxation of credits and intangible rights as property has been upheld. In the case of *Trustees etc. v. McConnell*³ it was held that money loaned was a subject of taxation. In the case of *People v. Rhodes*, it was held that notes for money due for land sold by contract, was a proper subject of taxation, as well

¹ *Sawyer v. The City of Alton*, 4 Ill. 127, 129 (1841).

² *Rinehart v. Schuyler et al.*, 7 Ill. 473, 505, 511 (1845).

³ 12 Ill. 258 (1850).

as the land the title to which was still held as security for the purchase money.⁴

In *People v. Worthington*, it was held that the legislature had the right to tax notes and credits secured by mortgage on lands sold.

"The word property is not alone used in our language to denote tangible things, but is properly applied to denote intangible rights of value. One may have a property in a patent right or a copyright, which is as much ideal as is a right of action. We may safely assume that it was the policy of the convention which framed this clause of the constitution, that each person pay a direct tax in proportion to the pecuniary interests which he has in the state, and to be protected and defended by the laws."⁵

But the fact that certain credits and deductions are allowed in the assessment of personal property does not establish a want of uniformity.⁶

It has further been held that the franchise of a corporation is property which has value that can be estimated; and that there is nothing illegal or unjust in a rule of the state board of equalization that to value the stock and franchise of incorporated companies, the fair cash value of the capital stock be added to the fair cash value of the debts of the company, except the debt for current expenses.⁷

In the so-called *Teachers' Federation* case, the state board of equalization was required by mandamus to assess the capital stock of public utility corporations, but the Supreme Court of the United States held that the assessment should be made on the same basis as that of other corporations of the same class.⁸

To secure the uniformity required by the constitution, it has been held that two things are essential:

"First, the assessments shall be just and equal, in proportion to the value of the property liable to assessment; and secondly, when thus assessed, the rate shall be uniform as to every person, and on every species of property returned by the assessor for taxation".⁹

But, in the case of the *First National Bank of Urbana v. Holmes*, it was held that where bank shares were assessed on the same basis as other personal property, but at a higher percentage of true value than real estate, there was no equitable right to have the valuation of bank shares reduced.¹⁰

Commutation-License Fees. Under the first state constitution, it was held that an exemption of the State Bank of Illinois from all taxation in consideration of the payment of one-half per cent on their capital stock was valid and constitutional.¹¹

⁴ 15 Ill. 304 (1853).

⁵ *People v. Worthington*, 21 Ill. 170 (1859).

⁶ *Edwards v. People*, 88 Ill. 340 (1878).

⁷ *Ottawa Glass Co. v. McCaleb*, 81 Ill. 556 (1876). *Porter v. Rockford*, R. I. & St. L. R. Co. 76 Ill. 561 (1875).

⁸ *State Board of Equalization v. People*, 191 Ill. 528 (1901); *Raymond v. Chicago Union Tr. Co.*, 207 U. S. 20 (1907).

⁹ *Sherlock v. Village of Winnetka*, 68 Ill. 530 (1873).

¹⁰ *First National Bank of Urbana v. Holmes*, 246 Ill. 362 (1910).

¹¹ *State Bank v. People*, 4 Scam. 303 (1843).

Under the constitution of 1848, it was also held that the state could commute state and local taxes for a percentage of earnings paid to the state treasury, and could commute taxes for an equivalent burden.¹²

It has also been held that the constitutional provision in reference to taxation has no application to fees exacted for a license.

"The constitution has not prohibited the general assembly from imposing or authorizing the imposition of the duty to procure a license to pursue any calling, nor has it limited the power or limited its exercise."¹³

More recently, it has been held that a state license tax, under the list of special objects of taxation in Section 1 of Article IX, was not valid, where it was provided that this should supersede taxes on personal property. But such special taxes are valid where imposed in addition to the general taxes on property.¹⁴

Exemptions. The enumeration (in section 3 of Article IX) of certain classes of property which may be exempted from taxation is an exclusion of all other subjects of exemption and a limitation upon the power of the General Assembly to exempt any other property.

"Under Section 1 of Article IX of the Constitution we think it is plain that the burdens of taxation were intended to be cast equally upon all the property of the State, of every description. Where revenue was needed a tax is required to be levied, on a valuation, so that every person and corporation shall be required to pay a tax in proportion to the value of his, her, or its property. Uniformity of taxation on all property was the cardinal principle of that section of the Constitution, and had it not been for the adoption of Section 3 of Article IX, the Legislature would have had no power, in any case, to enact a law exempting any property from taxation".¹⁵

"If there is an exemption of property within the classes enumerated in the constitution, it must be by general law, but authority is denied to the legislature by the constitution to exempt any property except that which is enumerated, by any form of legislation, general or special. Any exemption from the rule of equality established by Section 1 of Article IX outside of the kinds of property enumerated in Section 3 of that article is absolutely prohibited".¹⁶

Thus it has been held that the legislature cannot exempt property of religious or charitable institutions held for profit, nor the property of schools not used for school purposes, nor parsonages (which are

¹² Ill. Central R. Co. v. McLean Co., 17 Ill. 291 (1855); Hunsaker v. Wright, 30 Ill. 146 (1863).

¹³ Wiggins Ferry Co. v. East St. Louis, 102 Ill. 560 (1882); see East St. Louis v. Wehrung, 46 Ill. 392 (1868); Chicago Packing Co. v. Chicago, 88 Ill. 221 (1878); U. S. Distilling Co. v. Chicago, 112 Ill. 19 (1884).

¹⁴ Raymond v. Hartford Fire Ins. Co. 196 Ill. 329 (1902); Harder's Storage Co. v. Chicago, 235 Ill. 58 (1908).

¹⁵ People's Loan and H. Assn. v. Keith, 153 Ill. 609, 618 (1894).

¹⁶ Consolidated Coal Co. v. Miller, 236 Ill. 149, 153 (1908).

held not to be primarily used for religious purposes), nor the property of building and loan associations, or fraternal benefit societies, nor the capital stock of certain classes of corporations.¹⁷

An act of 1915 providing for the payment of high school tuition for pupils from districts not maintaining a high school, out of the state school fund, has been held to be unconstitutional, as conflicting with the rule of uniformity and with the provision of Section 6 of Article IX against the release or commutation of taxes.

"The effect of the act is to require the tax payers in a district maintaining a high school to indirectly contribute to the tuition of persons residing in districts maintaining no such school, and therefore to contribute to the local and corporate purpose of furnishing an education to the children of such district. The tax payers of the district maintaining a high school pay to make up the state school fund and then are deprived of a portion of it for the benefit of districts not maintaining any high school; and the same is true of any district not maintaining a high school which does not send any of its pupils to a high school in another district. The act violates the fundamental principle of uniformity and equality in taxation. . . ."

"The effect of the act is to exempt owners of property in districts not providing four years of recognized high school work from paying taxes proportionate to the value of their taxable property as compared with the taxable property of other districts, to the extent that the state tax is appropriated to a local and corporate purpose. The result is to release the districts from the payment of taxes for such purpose."¹⁸

Inheritance Tax. The inheritance tax has been held not to conflict with the constitutional requirement of uniformity.

"A tax which affects the property within a specific class is uniform as to that class, and there is no provision of the constitution which precludes legislative action from assessing a tax on that particular class. By this act of the legislature six classes of property are created heretofore absolutely unknown. It is those classes of property depending upon the estate owned by one dying possessed thereof which the state may regulate as to its descent and the right to devise. The tax assessed on classes thus created is absolutely uniform on the classes upon which it operates, and under the provisions of the statute it is to be determined by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property inherited, and is not inconsistent with the principle of taxation fixed by the constitution. . . . No want of uniformity with one living who owns property can be urged as a reason why the statute makes an inconsistent rule. No person inherits property or can take by devise

¹⁷ *Northwestern Univ. v. People*, 86 Ill. 141 (1877); *Supreme Lodge v. Board of Review*, 223 Ill. 54 (1906); *People v. First Cong. Church*, 232 Ill. 158 (1908); *Consolidated Coal Co. v. Miller*, 236 Ill. 149 (1908); *People v. Deutsche Gemeinde*, 249 Ill. 132 (1911).

¹⁸ *Board of Education v. Haworth*, 274 Ill. 538, 544 (1916).

except by the statute, and the state, having power to regulate this question, may create classes and provide for uniformity with reference to classes which were before unknown."¹⁹

Corporate Authorities. The provisions of Article IX relating to taxes and special assessments by municipal corporations have given rise to a number of questions before the courts. Under the constitution of 1848, it has held that Section 5 of Article IX, providing that the corporate authorities of "counties, townships, school districts, cities, towns and villages" may be vested with power to assess and collect taxes for corporate purposes, limited the power of the legislature to authorize any other than corporate authorities to assess and collect local taxes; and that by "corporate authorities" must be understood municipal officers either directly elected by the people to be taxed, or appointed in some mode to which they have given their assent; but that it does not limit the legislature to any particular corporate authorities and that the commissioners of a park district established by popular vote, including several towns, are corporate authorities of the towns and may be vested with power to tax.²⁰

But a subsequent act of the legislature changing the method of appointing park commissioners (by a circuit judge), and conferring this power on the governor, without the consent of the people of the district, was declared invalid.²¹

So too, election commissioners appointed by the county judge under an optional law, adopted by the people of an incorporated city, are regarded as corporate authorities for incurring election expenses to be paid by the city.²²

Local Improvements. On the other hand, under section 9, Article IX of the constitution of 1870, it was held that taxes and special assessments may not be authorized to be levied for drainage works and levees by commissioners and the county court without the consent of the community to be taxed; and it was further held that the constitutional provision relating to special assessments for local improvements applied only to "cities, towns and villages", and not to all municipal corporations.²³

Following this decision section 31 of Article IV of the constitution was amended in 1878 so as to authorize the corporate authorities of drainage districts to be vested with power to construct and maintain levees, drains and ditches, by special assessments on the property benefited.

¹⁹ *Kochsperger v. Drake*, 167 Ill. 122 (1897; See *Magoun v. Illinois Bank*, 170 U. S. 283 (1897); *Billings v. Illinois*, 188 U. S. 97 (1903)).

²⁰ *People v. Chicago*, 51 Ill. 1 (1869); *People v. Salomon*, 51 Ill. 37 (1869); *Harward v. St. Clair Drain Co.*, 51 Ill. 130 (1869).

²¹ *Cornell v. People*, 107 Ill. 372 (1883).

²² *Wetherell v. Devine*, 116 Ill. 631 (1886).

²³ *Updike v. Wright*, 81 Ill. 49 (1876).

In a later case, the rule that corporate authorities means those locally elected or appointed in some mode to which the district has given assent, has been applied to hold invalid a provision in a drainage law providing for the appointment of commissioners without any provision for a local referendum on the law.²⁴

So too, a provision in the Levee Act requiring towns to replace a bridge removed by commissioners of a drainage district was held unconstitutional, as the drainage commissioners are in no sense corporate authorities of the towns.²⁵

At the same time, it has been held that park boards may be vested with power to make local improvements by special assessments, on the ground that such park districts are municipal corporations, although not named in the clause of Section 9, authorizing special assessments for "cities, towns and villages".²⁶

The provision in section 9 of Article IX authorizing the use of special assessments or special taxation of contiguous property for local improvements has been held to authorize one or the other method, but not both in combination on the same improvement. General taxation may be combined with special assessments or with special taxation, but not special assessments and special taxation in the same proceeding.²⁷

A local improvement has been defined as "a public improvement which, by reason of its being confined to a locality, enhances the value of adjacent property, as distinguished from the benefits diffused by it through the municipality." In connection with special assessments, they have been held necessarily to involve the idea of permanency in the improvement, since they are based on the idea of equivalent benefit to the property owner; and street sprinkling and the maintenance and repair of boulevards have been held not to be local improvements which could be paid for by special assessment.²⁸

It has further been held that a "local improvement" must be wholly within the limits and under the control of one municipality. A sewer from a point in a city to the city limits and thence through an incorporated town to an outlet, designed for use by both municipalities, is one continuous improvement and not a separate improvement as to each municipality.²⁹

²⁴ *Herschbach v. Kaskaskia Sanitary District*, 265 Ill. 388 (1914); *Funkhouser v. Randolph*, 287 Ill. 94 (1919).

²⁵ *People v. Block*, 276 Ill. 286 (1916).

²⁶ *Van Nada v. Goedde*, 263 Ill. 105 (1914).

²⁷ *Kuehner v. Freeport*, 143 Ill. 92 (1892).

²⁸ *Chicago v. Blair*, 149 Ill. 310 (1894); *Crane v. West Chicago Park Commissioners*, 153 Ill. 348 (1894).

²⁹ *Hundly v. Lincoln Park Commissioners*, 67 Ill. 559 (1873); *Loeffler v. Chicago*, 246 Ill. 43 (1910).

IV. CRITICISM OF PRESENT TAX SYSTEM

The long continued and widespread criticism of the present system of taxation in Illinois relates to defects in administration, failure to meet its own standards of uniformity and equality, the impossibility of its enforcement, and the injustice involved in a strict application of the principles on which the tax laws are based, as construed by the courts. More specifically, the objections urged are to the general undervaluation of property, the great inequalities in the assessments made, and the escape from taxation of large amounts of property.

Undervaluation. The most obvious factor is the universal undervaluation in the assessment of property for taxation. This practice has been definitely recognized in the law; by the provisions for assessment at a fractional part of the "full value". But it is clear that the "full value" as placed on the assessment books falls a good deal short of the actual true value. This situation is not only generally known; but has been officially recognized and its extent indicated to some extent in the reports of the United States census. In the table below a comparison is made of the census estimates of the true value of tangible, taxable property and the assessed valuation of property in Illinois at different census years from 1850 to 1912, and the assessed valuation for 1918.

Estimated true value and assessed valuation of taxable property in Illinois, 1850-1918.^a

Year.	Estimated true value tangible taxable property	Assessed valuation.	Percentage assessed value of estimated true value.
1850.....	\$ 156,265,006	\$ 119,863,336	76.8
1860.....	871,860,282	389,207,372 ^b	44.6
1870.....	2,121,680,579 ^c	482,899,575 ^b	22.8
1880.....	3,092,000,000	786,616,394	25.4
1890.....	4,880,750,239	809,682,926 ^b	16.8
1900.....	6,719,615,640	4,048,414,630 ^d	60.2
1904.....	8,534,009,347	5,402,359,960 ^d	63.3
1912.....	14,596,467,087	7,031,019,696 ^d	48.0
1918.....	.....	7,878,253,158 ^d	....

(a) From U. S. Census Reports on Wealth, Debt and Taxation.

(b) Auditor's reports show assessed valuation for 1860, \$367,227,742; for 1870, \$480,664,058; for 1890, \$808,892,782.

(c) Currency Values.

(d) Assessor's "Full Value", 5 times the taxable value for 1900 and 1904; 3 times the taxable value for 1912 and 1918.

It will be noted that there was a steady decrease in the percentage of true value assessed from 1850 to 1890. With the legal recognition

of undervaluation in the assessment law of 1898, there was a large increase in the "full value" assessments. But since 1894 the "full value" assessments have again declined to less than half of the census estimates of the true value of tangible taxable property.

This general underassessment of property is one of the most important factors in the present system of taxation. So long as real estate and tangible property is undervalued for taxation, it cannot be expected that intangible property will be returned and assessed at its true value.

Inequalities. If the undervaluations in assessments were all made on the same basis, the principal effect would be to increase the nominal rates of taxation necessary to raise public revenue. But along with the general undervaluation, it is clear that there is a great deal of inequality in the degree of undervaluation, and a corresponding inequality in distributing the burdens of taxation, as between different classes of property different local districts and different taxpayers.

Such inequalities appear even in the assessment of real estate, as between different counties, and as between lands and town and city lots. In some counties the "full value" assessment of real estate has been twice as high in proportion to the census estimates of true value as in other counties; and even in recent years there has been a variation of as much as 50 per cent in the relative degree of assessment as between different counties.¹

As between farm lands and urban real estate, the census reports indicate that in 1912 farm lands were assessed at a somewhat lower proportion of true value—about 50 per cent in comparison with 60 per cent for urban real estate. The increase in value of lands since that time is not reflected in the assessed valuations.

Little attention has been given to the taxation of the large amount of mining lands in Illinois, though such property should receive special consideration and can not be properly assessed by local assessors.

The general undervaluation of real estate is of importance in making comparisons with the greater underassessment of intangible personalty. The full assessment of the latter can hardly be expected so long as real estate is largely underassessed.

Estimated true value and assessed valuation of taxable real estate in Illinois.^a

Year.	Estimated true value.	Full assessed value.	Percentage assessed valuation of estimated true value.
1890.	\$3,108,040,960	\$ 587,442,289	18.9
1900.	4,008,676,366	2,841,841,545	70.8
1904.	5,185,946,082	3,805,196,640	73.3
1912.	9,158,336,367	4,945,501,638	54.0
1918. ....	.....	5,349,023,202	....

¹ Fairlie, J. A.: *Taxation and Revenue System of Illinois*, p. 26.

^a From U. S. Census Reports, Reports of Auditor of Public Accounts and Proceedings of the State Board of Equalization.

Estimated true value of farm lands and buildings and assessed valuation of lands and improvements in Illinois.^a

Year.	Estimated true value of farm lands and buildings.	Assessed valuation of lands and improvements. ^c	Percentage assessed valuation to estimated true value.
1850.....	\$ 96,133,290	.....	....
1860.....	408,944,033	\$ 189,286,287	46.3
1870.....	920,506,346 ^b	225,889,130	24.5
1880.....	1,009,594,580	398,338,737	39.8
1890.....	1,262,870,587	345,750,094	27.4
1900.....	1,821,224,434	1,326,861,140	72.9
1904.....	2,320,637,707	1,705,229,270	73.5
1910.....	3,522,792,570	1,967,795,496	55.8
1912.....	4,150,000,000	2,075,269,068	50.0
1918.....	.....	2,120,270,607	....

^a From U. S. Census Reports, Reports of Auditor of Public Accounts and Proceedings of State Board of Equalization.

^b Currency Values.

^c "Full value" assessments for 1900 and subsequent years.

More striking are the variations and inequalities in the assessment of personal property.

The census estimates indicate that assessments of all personal property were only about 31 per cent of the true value of tangible personal property in 1912, as compared with 54 per cent for real estate. In respect to the various items of enumerated personal property the most absurd and whimsical variations appear in the official reports, both as to the number and the average value of particular items in different counties, and in different towns of the same county.¹ On the face of the returns it seems clear that local assessors in many parts of the state make no attempt at a complete assessment of all the petty items in the schedule required by the revenue law; and in some assessment districts it is said they omit altogether personal property below a minimum limit. In all of this there is no effort at a uniform standard of exemption; and the local assessors use their own discretion.

Average taxable value of specified items of enumerated property, 1918.

Items.	Maximum county average value.	Minimum county average value.	State average value.
Cattle	\$ 23.24	\$ 8.02	\$ 13.49
Hogs	8.05	1.15	4.73
Billiard Tables.....	120.72	3.00	17.14
Carriages and Wagons.....	21.00	4.17	7.15
Automobiles	128.13	23.56	85.34
Watches and Clocks.....	20.25	.97	1.78
Sewing machines.....	4.73	1.49	2.15
Pianos	41.41	14.23	21.27
Steamboats	997.00	2.00	139.80

In St. Clair County only 10 steamboats were assessed, in Cook County 64, and in Lake County 258 (925 in 1917). No sewing machines were assessed in Pulaski and Putnam counties.

¹ See report on Taxation in Illinois by the committee on revenue of the house of representatives in 1919.

*Estimated true value and assessed valuation of taxable property in
Illinois, 1912.^a*

	Estimated true value.	Full assessed value.	Per- cent- age.	Taxable value.
Total	\$14,596,467,087	\$7,031,019,696	48.	\$2,343,673,232
Real property and im- provements	9,158,336,367	4,928,513,847	54.	1,642,513,847
Personal and other tangible property..	5,438,130,720	1,703,892,204	31.3	567,964,068
Intangible property..	.....	398,613,645	.....	132,871,215
Live stock.....	386,701,265	178,420,251	46.2	59,473,417
Farm Implements and Machinery	79,473,427	13,740,690	17.2	4,580,230
Manufacturer's ma- chinery, tools, etc..	451,299,068	24,520,277	5.4	8,173,759
Railroads and Equip- ment	926,403,787	616,276,965	66.5	205,425,655
Street railways, ship- ping, water works, etc.	748,713,023 }	870,933,021	25.7	290,311,007
All other	2,640,354,876 }			
Gold and silver coin and bullion.....	205,185,274	.....	.....	205,425,655
Moneys, credits, etc..	.....	325,097,496	.....	108,365,832
Capital Stock .....	.....	73,516,149	.....	24,505,383

^a U. S. Census Report on Wealth, Debt and Taxation 1912, and Proceedings of the State Board of Equalization.

Inequalities and variations in the assessment of real estate and some kinds of tangible personal property may be reduced by more efficient methods of administration; and some improvement in such matters may be looked for from the State Tax Commission established in 1919. But if it seems advisable to exempt by law a minimum amount of household property (as is done in a number of states, and as is practically done by local assessors in Illinois), or to establish some kind of business tax in place of the taxation of merchandise or manufacturer's equipment, a change in the present constitutional requirement for uniform taxation of all property will be necessary. Still further, if it should be desired to permit any classification of real estate, (for example, so as to place on a definite legal basis variations which now exist in practice in a hap-hazard way), or to segregate some classes of property for state revenue (such as railroads and public utilities)—as is done in some states—the present constitutional provisions will need to be altered.

Intangible property. The most serious evasions of the present tax laws however are in connection with the assessment of intangible wealth, such as money, credits, stocks and bonds. Under the existing laws, such wealth is taxable, on the same basis as tangible property. But only a small proportion of it has ever been taxed; and no method has been discovered of making any satisfactory estimate of the total amount. Some facts in connection with the assessment of such property and as to the value of certain kinds of wealth included will throw light on the great degree of evasions.

The table below shows the assessed valuation of various items of personal property in Illinois, for Cook County and for all other counties for the year 1918.

Taxable valuation of specified items of personal property in Illinois, 1918—Cook County and all other counties.”^a

Items.	State of Illinois.	Cook County.	All other counties.
Enumerated property.....	\$106,441,575	\$4,673,813	\$101,767,762
Merchandise	51,762,151	24,341,928	27,420,223
Grain	19,754,320	266,548	19,487,772
Household and office furniture..	22,860,711	7,535,943	15,324,768
Money of Bankers, etc.....	17,753,576	4,543,135	13,210,441
Credits of Bankers, etc.....	12,849,327	5,386,388	7,462,939
Money not Bankers, etc.....	39,196,990	4,543,135	34,653,855
Credits, not Bankers, etc.....	36,632,932	2,220,205	34,412,727
Shares of Corporation stock....	2,339,545	503,595	1,835,950
Bonds and Stocks.....	7,787,038	3,004,095	4,782,943
Property of Corporations.....	20,741,147	15,996,093	4,745,054
Bank shares	75,361,488	59,572,528	15,788,960
All other property.....	140,407,284	119,181,749	21,225,535
Total Unenumerated property...	477,548,146	256,035,698	221,512,448
Total Personal property.....	583,989,721	260,709,511	323,280,210

It will be noted that both for enumerated property and for most of the items of intangible wealth, the assessment for Cook County is only a small fraction of that of the rest of the state; although this county has nearly half of the total real estate assessment, and four-fifths of the assessment of bank shares. On the other hand, the assessment for “all other property” in Cook County is about six times the amount under this head for the rest of the state, and is nearly one-half of the total assessment for personal property in Cook County. The explanation of this seems to be that a large proportion of the personal property assessments in Cook County are made in lump sums under the heading of “all other property”, without attempting to segregate them under the various items in the schedule. Such assessments appear to be based on statements by the taxpayers to the assessors, made in place of filing the schedules required by law. How much of this should be apportioned to the various items of tangible or intangible property, there is no way of determining; but as about one-third of the personal property assessments in other counties are for intangible property, it may be roughly estimated that at least one-third, and perhaps more, of “all other property” in Cook County represents assessments for intangible property.

This large uncertain item, and the impossibility of apportioning it exactly to the various other items, adds to the difficulties of attempting to estimate the extent to which intangible property escapes taxation. The tables below, however, give some data as to two important items in the personal property list. Bank deposits are legally assessable as money of other than banker, broker, etc.; and mortgages form perhaps the largest portion of credits other than bankers, brokers, etc. In both of these cases, the item in the assessment schedule covers more than the property with which it is compared. Yet in each case, it will be

^a From Proceedings of the State Board of Equalization.

seen that the full assessed value of this whole group of property is only a small fraction of the true values estimated for but a part of such property legally subject to assessment.

Comparison of individual bank deposits with assessed full valuation of money other than of bankers, brokers, etc.^a

Year.	Individual bank deposits.	Assessed full value of money other than bankers, etc.	Per cent de- posits of as- sessed value of money, etc.
<i>State of Illinois.</i>			
1890.....	\$ 142,040,086	\$ 9,456,573	6.6
1900.....	317,169,861	75,578,260	23.8
1904.....	519,943,194	89,442,815	17.2
1912.....	958,707,244	101,486,574	10.5
1916.....	1,224,879,536	108,700,854	8.8
1918.....	.....	117,590,970	....
<i>Cook County.</i>			
1890.....	98,937,333	1,061,264	1.1
1900.....	220,149,202	8,376,655	3.8
1904.....	347,848,769	9,829,575	2.8
1912.....	622,524,029	6,519,831	1.0
1916.....	.....	11,104,650	....
1918.....	.....	13,629,405	....
<i>All Other Counties.</i>			
1890.....	43,102,753	8,395,309	19.5
1900.....	97,020,659	67,201,605	69.3
1904.....	172,094,425	79,613,240	46.3
1912.....	336,173,215	94,966,743	28.2
1916.....	.....	97,596,204	....
1918.....	.....	103,961,565	....

^a Compiled from Haig's History of the General Property Tax in Illinois, Reports of the Comptroller of the Currency, Auditor's Report on State Banks, and Proceedings of the State Board of Equalization.

*Comparison of Estimated True Value of Taxable Mortgages with
Assessed Full Valuation of Credits other than bankers, etc.*

Year.	Estimated true value of tax- able mort- gages. ^a	Assessed full value of cred- its other than bankers, etc. ^b	Per cent mort- gages to as- sessed value of credits.
<i>State of Illinois.</i>			
1880.....	\$ 137,297,789	\$ 17,680,302	12.8
1887.....	246,492,072	12,168,825	4.9
1904.....	600,000,000	118,140,370	19.7
1912.....	1,000,000,000	115,685,073	11.5
1918.....	.....	109,898,796	....
<i>Cook County.</i>			
1880.....	47,566,172	211,815	0.5
1887.....	137,372,075	117,170	0.1
1904.....	350,000,000	18,567,275	5.3
1912.....	600,000,000	15,271,035	2.5
1918.....	.....	6,660,615	....
<i>All Other Counties.</i>			
1880.....	89,731,617	17,468,487	19.5
1887.....	109,119,997	12,051,655	11.1
1904.....	250,000,000	99,573,095	39.9
1912.....	400,000,000	100,414,038	25.1
1918.....	.....	103,238,181	....

In the table below the proportionate assessment of moneys and credits other than bankers, etc., are compared with the proportionate assessment of all tangible property, real estate and farm lands.

Percentages assessed full value of estimated true value.

Year.	All taxable property.	All real estate.	Farm lands.	Money other than bankers, etc.	Credits other than bankers, etc.
1880.....	25.4	....	39.8	....	12.8
1887.....	....	....	....	....	4.9
1890.....	16.8	18.9	27.4	6.6	....
1900.....	60.2	70.8	72.9	23.8	....
1904.....	63.3	73.3	73.5	17.2	19.7
1912.....	48.	54.	50.	10.5	11.5

^a For 1880 and 1887 from Haig's History of the General Property Tax in Illinois, based on data in Report of the Bureau of Labor Statistics, 1888. Data for 1904 and 1912 are computed from study of Jo Daviess County (See Report of Wisconsin Tax Commission, 1907) and census estimates of true value of real estate.

^b From Proceedings of the State Board of Equalization.

From the above figures, it appears that money and credits other than bankers have been assessed at not more than one-third as much of their true value as real estate, and in recent years at not more than about one-fifth as much as real estate. Even assuming that one-

third of the assessment for "all other property" in Cook County represents property assessable under these items, the total assessment would be only about one-fourth of the percentage of true value as in the case of real estate.

This does not mean, however, that there is simply a general undervaluation of intangible wealth in this proportion, and that all or most of those owning such property are assessed for about one-fifth or one-fourth of their holdings. In many cases where such intangible wealth is assessed it is valued at least as much in proportion to true value as is real estate, and in not a few cases at a greater proportion. Such property when in course of probate or owned by trust estates is a matter of public record; and may be assessed at its actual value; and thus pay a relatively larger tax than real estate. The undervaluation of intangible property in the aggregate therefore means that a large proportion of such property is not assessed at all and escapes taxation altogether.

When mortgages, bonds and other securities are returned for taxation, and are assessed according to law, at their face value, such property is in fact assessed and taxed relatively much more than real estate and tangible property, which as has been noted are assessed at much below their true value. So long as real estate is largely undervalued by the assessors, there should be at least a corresponding reduction in the assessment of intangible property in order to comply with the theory of uniformity of taxation.

These difficulties are not likely to be overcome by any change in methods of administration. The experience of other states confirms that of Illinois, that it appears to be impossible under any administrative machinery to secure the full assessment of intangible property so long as it is subject to taxation on the same basis as real estate and other tangible property. The practical results of such attempts is strengthened by other arguments. It is urged on the one hand that the taxation of such intangible holdings is double taxation, since they merely represent an interest in tangible property already taxed; and on the other hand, it is asserted that taxation at the rates now imposed under the general property tax, if enforced, would amount to the unjust confiscation of from a third to a half of the income; and that any approach to collecting such taxes would merely compel investors to withdraw their investments from this state.

In some states mortgages are entirely exempt from taxation, on the ground that they represent an interest in property already taxed. In other states mortgages are subject to a special recording tax, or they are taxed along with other intangible property at a special rate less than that levied on real estate. The experience of such states, as Pennsylvania, Maryland, Michigan, South Dakota, Virginia and others, as shown later in this pamphlet, shows that by such special taxes a larger revenue is secured than under the general property tax.

To make similar or other changes in the methods of taxing intangible property in Illinois will require changes in the present constitutional provisions for the uniform taxation of all property.

Special Taxes. Under the Illinois constitution special taxes are authorized, in addition to the general property taxes, on certain kinds of business and on corporations. Some use has been made of this authority in the form of fees and taxes on corporations and insurance premiums and on some of other kinds of business. A considerable revenue is derived by the state from corporation fees, automobile licenses and the inheritance tax; and the revised corporation law of 1919 provides for an increased scale of license taxes on corporations. But such special taxes are not likely to be utilized fully so long as they must be imposed in addition to the general property tax. If they could be levied as a substitute for property taxes and if they were not restricted to the particular classes named in the constitution a larger amount of revenue could be derived from special taxes.

Among the methods of taxation used in other states and counties, but which are not permitted under the Illinois constitution the following may be noted: Income taxes, either at a flat rate or graduated and progressive; special taxes on mortgages or on intangible property; a state tax on railroads and other public utilities (based on gross earnings or at the average rate on other property); business and habitation taxes; and taxes on land values.

It is not necessary here to consider the relative merits and defects of these different methods of taxation. For it will not be advisable to establish a complete system of taxation in the constitution. But none of these methods may be used in this state without altering the present constitutional provisions.

Special assessments. Some problems have been raised by the constitutional provisions relating to special assessments and special taxation for local improvements. The history of these provisions indicate that the purpose of the clause adopted in the constitution of 1870 (Section 9 of Article XI) was to authorize special taxation for local improvements, as well as special assessments for benefits, which had been already recognized. But in the provision adopted in 1870 the use of both special assessments and special taxation for these purposes was limited to cities, towns and villages. An amendment to the constitution was therefore necessary to authorize special assessments for drainage districts; but this amendment does not authorize special taxation for such districts. The Supreme Court has held that special assessments may be used by park districts. But a change in the constitution will be required to permit special assessments by municipal corporations other than cities, towns, villages, park districts and drainage districts.

The Supreme Court has held that the term "local improvements" for which special assessments are permitted means improvements of a permanent character; that each improvement must be under the control of a single municipality; and that special assessments may not be used for an improvement undertaken jointly by two or more municipalities.

If it is considered desirable to permit special assessments for other than permanent improvements (such as street sprinkling, snow removal or garbage collection, as is authorized in some states), or for improvements which require the joint action of two or more neighboring municipalities, a change in the constitutional provisions will be required.

It has also been decided by the Supreme Court that special assessments and special taxation may not be combined in connection with the same improvement. The question may be considered whether it is desirable to permit such a combination.

Uniformity within taxing districts. The requirement of uniformity of taxation within taxing districts (Art. IX, sec. 9) has also caused difficulties; and in connection with the constitutional limitation on municipal debts has forced the multiplication of overlapping local districts, and prevented the development of a satisfactory system of local government.

This has been most notable in connection with city and village government. Annexation of outlying territory to such municipal districts is delayed, because even farm lands when annexed are at once subject to taxes for urban improvements from some of which they derive little or no benefit. But when some services or improvements of the urban community are needed or desired, the only way they can be secured is through the agency of a special taxing district. In this way urban school districts are extended beyond the limits of the cities; and special park, drainage or sanitary districts are organized, adding to the complexities of local government. A single local government over the whole territory, with power to levy taxes for certain improvements and services only on property benefited would be more effective.

An important illustration of these conditions may be found in the sanitary district of Chicago, the functions of which could well be performed by the county if the county could be authorized to levy sanitary district taxes only on the territory and property now within the sanitary district.

Another illustration has been the necessity for organizing non-high school districts for the sole purpose of providing an agency to levy taxes for high school tuition in parts of a county not in a high school district.

A somewhat similar problem is presented by the suggestion to authorize a county tax for county libraries, to be levied on property not already taxed for city or village libraries in the county.

It may also be suggested that public improvements for the benefit of a large part of the state, which can most effectively be carried out by the state, might be more equitably financed if parts of the state clearly not benefited could be relieved from state taxes for such improvements.

Tax sales and redemptions. The provisions in the present constitution relating to tax sales and redemption of property from such sales are less detailed than those in the constitution of 1848. But the existing provisions appear to prevent legislation to remedy some defects in the present system of tax sales, so as to eliminate the professional tax buyer and to permit a taxing body to purchase land upon which taxes are delinquent without a sale open to competitive bidding.

Official criticisms. Complaints and criticisms of the Illinois tax system have been freely and frequently made not only by numerous private persons and associations but also by public officials. Some of those made by a number of governors and in the reports of several special investigations may be noted:

Governor Beveridge, in his message to the general assembly in 1875 stated:

"It is apparent that a large portion of the personal property, especially moneys and credits, are not assessed; that all property, real and personal, is assessed below its actual value; and that a considerable percentage of the taxes are never collected."

In 1881, Governor Cullom recommended the appointment of a revenue commission, to collect statistics, to examine the tax systems of other states and counties, and to aid in the preparation of a revised law "which will better equalize and simplify the burdens of taxation."

In 1885, under a joint resolution of the 34th general assembly, a revenue commission was appointed by Governor Oglesby, "to amend and revise the revenue law of the state of Illinois, and to propose and frame a revenue code which shall be just to all classes of property and individual and corporate associations." This commission reported, on March 1, 1886, that the principal defects of the revenue system were: (1) Gross inequality in assessments as between individuals and different kinds of property; (2) arbitrary and unjust operation of the system of equalization; (3) the low rate of assessments; (4) the high rate of taxation; (5) the inadequacy of existing methods; and (6) the want of a central and efficient supervision of administration. The commission also submitted the draft of a new revenue law, proposing important changes in administration, by providing for county assessors and a state tax commission, with changes in the statutory provisions in relation to personal property schedules, the assessment of capital stock, and the taxation of public utilities. No action was taken on this report or the proposed revenue law.

In 1889, Governor Oglesby again invited attention to the proposed revenue code submitted by the revenue commission and made the following statement:

"It is within the knowledge of every reflecting citizen that our revenue laws are not satisfactory. It is well understood that large amounts of taxable property escape taxation every year; and that

taxes collected on property made to bear the burden of supporting the government are most inadequately and unfairly laid upon such property."

The State Bureau of Labor Statistics made two extended reports relating to taxation. Its fifth biennial report, in 1888, included the results of a detailed study of mortgage indebtedness throughout the state, which furnished data for comparisons with the assessment of mortgages for taxation. The eighth biennial report of the bureau, in 1894, was devoted entirely to a comprehensive investigation of taxation, showing the inequalities of the existing system with reference to the taxation of both personal property and real estate. This report made the following recommendations:

1. The divorce of state from local taxation.
2. The separation of improvement from site values in tax returns.
3. The organization of boards of review.
4. Maps and records of taxable property.
5. A constitutional amendment to authorize local option in taxation.
6. A constitutional amendment to establish site value taxation.

These investigations indicated the small extent to which mortgages and other intangible property were assessed and taxed.

In 1895, Governor Altgeld asserted, in his message to the general assembly:

"Whatever may be said of the theory of our revenue system in this state, it is in its practical workings, a grant of injustice. Under it the great concentrations of wealth contribute comparatively little, while the owners of small and moderate sized properties are forced to bear nearly all the burdens of government."

Two years later, he referred again to the subject, and stated that:

"Every governor for more than twelve years has urged a revision of our revenue laws and pronounced the existing system a gigantic fraud."

After the passage of the assessment law of 1898, Governor Tanner, in his message of 1901, stated that:

"The revenue laws still need revision and amendment."

In 1907, Governor Deneen recommended the formation of another revenue commission; but vetoed the bill passed because it provided that it should be composed of members of the general assembly. Two years later he renewed this recommendation; and an act was passed providing for the appointment of a special tax commission, to investigate the system of taxation and to recommend needed changes. This commission, consisted of John P. Wilson, chairman, Alfred M. Craig, Edmund J. James, secretary, B. F. Caldwell, A. P. Grout, Harrison B. Riley and B. L. Winchell. It had prepared a comprehensive report on the *Taxation and Revenue System of Illinois*, with some comparisons with methods of taxation in other states and countries; and also a compilation of the *Tax Laws and Judicial Decisions*. In its

report to the governor in 1911, the commission criticised both the system of tax administration, and the uniform general property tax prescribed by the state constitution.

As a means of improving the administration of the tax laws, this commission renewed the recommendations of the revenue commission of 1886 for a permanent state tax commission and for county assessors. The recommendation for a permanent state tax commission has been finally acted on in 1919, and such a commission has now been established. The principal conclusions of this commission in relation to the present system of taxation were as follows:

1. Undervaluation, high tax rates and "a marked inequality in the assessment of different classes of property and of different pieces of property of the same kind owned by different persons."

2. "The most numerous complaints and the most serious inequalities arise in the assessment and taxation of intangible personal property, such as moneys and credits, mortgages, bonds and stocks. . . . It is evident that such intangible holdings . . . cannot be uniformly or equitably assessed under the general property tax . . ."

"As a result of the present situation there is a notorious evasion of the terms of the revenue law, which are unjust in principle and unenforceable in practice . . ."

"Our study of the tax system of other states shows clearly that other methods of taxation than the general property tax are both more equitable and at the same time more successful as means of raising public revenue from intangible property. . . . But no such methods can be introduced in Illinois under the present constitutional restrictions requiring the taxation of all classes of property on an absolutely uniform basis. It therefore becomes necessary for any adequate change in the system of taxation that the constitutional provisions be amended."

3. ". . . In regard to some kinds of tangible personal property, exemptions would seem to be advisable, and for other kinds other methods of taxation would be better than the present ad valorem system. But here again no changes from the present basis can be legally made without a change in the constitutional provisions."

This report was submitted to the general assembly by Governor Deneen with a special message commending the recommendations of the commission.

Governors Dunne and Lowden have also advocated changes in the revenue law, with special reference to the creation of a permanent state tax commission in place of the state board of equalization.

V. PROPOSED CONSTITUTIONAL AMENDMENTS

A number of proposed constitutional amendments relating to taxation have been introduced in the general assembly.

At the adjourned session of 1874 two proposed amendments were introduced in the Senate, one to authorize exemption from taxation of property not to exceed \$1,000, and another to authorize an income tax. The latter came to a vote in the senate, but failed to receive the required two-thirds vote. Other resolutions proposing amendments to authorize an income tax and to extend the list of enumerated occupations and interests subject to special taxes were introduced in 1875, 1877 and 1879, but were not acted upon. In 1901 and 1905 proposed amendments to provide for local option in taxation were introduced; but no action was taken. In 1907, a proposed amendment was introduced to authorize classification of property; but this also failed to secure favorable action.²

The special tax commission of 1910 recommended an amendment to the state constitution to authorize the classification of personal property for taxation. As was pointed out by the commission the proposed amendment would not of itself make any change in the system of taxation, but would remove some of the restrictions on the general assembly and make possible the enactment of statutory changes in the future. No action was taken by the general assembly in 1911 or 1913.

One member of the commission, who signed the report, also submitted a minority report in favor of still broader power in the general assembly.

On November 5, 1912, the following question was submitted to the voters of Illinois under the Public Policy Act:

"Shall the next general assembly (in order that the people may be relieved of a system of taxation which places a comparatively heavier burden upon the poor man than upon his wealthier neighbor, which is unjust to all who fall under the full force of its operation, and which places a premium upon dishonesty) submit to the voters of the state of Illinois at the next following state election an amendment to the state constitution providing for the classification of property for purposes of taxation, with taxes uniform as to each class within the jurisdiction levying the same?"

The vote upon this question was: Yes, 541,189; No, 187,467. This was the largest affirmative vote ever cast in Illinois up to that time on any question submitted for popular vote, except that for direct primaries in 1904.

² Civic Federation Study No. 2, Ch. 5.

Amendments submitted in 1916. In May, 1915, the general assembly by a vote of two-thirds of each house, voted to submit the proposed constitutional amendment recommended by the special tax commission of 1910. This amendment received the votes of 35 out of 51 senators and of 130 out of 153 representatives. The proposed amendment read as follows:

"Article IX, Section 14. From and after the date when this section shall be in force, the powers of the general assembly over the subject matter of the taxation of personal property shall be as complete and unrestricted as they would be if sections one (1), three (3), nine (9), and ten (10) of this article of the constitution did not exist; provided, however, that any tax levied upon personal property must be uniform as to persons and property of the same class within the jurisdiction of the body imposing the same, and all exemptions from taxation shall be by general law, and shall be revocable by the general assembly at any time".

This proposed amendment was voted on at the general election in November, 1916. There were 656,298 votes for the amendment, and only 295,782 votes against. This was an over-whelming majority of the vote on the proposed amendment, and as it was also a majority of the vote at the election for members of the general assembly, the state canvassing board declared that the amendment was adopted. But, in the case of *People v. Stevenson*, the Supreme Court held that a majority of the total vote at the election, and not merely a majority of the vote for members of the general assembly, is required by the constitutional provision, and as the affirmative vote did not meet this test, it was held that the amendment was not adopted.³

It is clear, however, from the vote on this public policy question in 1912 and on the proposed amendment in 1916 that a large majority of those expressing an opinion were in favor of changing the present constitutional requirement for uniform taxation of all classes of property.

The proposed constitutional amendment voted on in 1916 would have enabled the general assembly to deal with some of the difficulties and defects in the present methods of taxation. But the change proposed was limited in character, and not sufficiently comprehensive to meet all of the criticisms or to make possible some methods of taxation (such as a graduated income tax) now successfully used in other states.

Further comments and conclusions on constitutional provisions will be found in chapter VII of this pamphlet.

³ *People v. Stevenson*, 281 Ill. 17 (1917).

VI. TAXATION IN OTHER STATES

In tracing the development of provisions on taxation in the state constitutions, four periods may be noted: before 1800, from 1800 to 1860; from 1860 to 1900; and since 1900. Up to 1860 the general movement was towards more detailed provisions requiring a uniform general property tax. During the next period, constitutional provisions became still more detailed, and some modifications of the general property tax were authorized. Since 1900 there has been an active movement for further constitutional changes, in which there is a decided tendency towards a relaxation of the earlier provisions.

Constitutional provisions before 1800. During the colonial period there was but little taxation and no clear tendency toward any definite system. Of the first state constitutions adopted during the Revolution, about one-half contained a provision that taxes should not be levied without the consent of the people or their representatives. Four states adopted provisions which mark the beginning of the theory of the uniform general property tax. The Maryland constitution of 1776 provided that each person should contribute his proportion according to his actual wealth in real or personal property. The Pennsylvania constitution of 1776 contained a provision that each person is bound to contribute his proportion to the expense of protection; and the same provision was adopted in the Vermont constitution of 1777. The Massachusetts constitution of 1780 had a more definite provision giving the general court full power and authority:

“to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident, and estates lying within the said Commonwealth; and also to impose and levy reasonable duties and excises, upon any produce, goods, wares, merchandise and commodities, whatsoever brought into, produced, manufactured or being within the same.”

The first of these clauses has been held to require a uniform rate of taxation on all property; while the second authorizes other duties and excises which are not subject to the rule of uniformity.

In the first constitution of Tennessee, adopted in 1796, appeared the earliest provision that taxation should be uniform, but with specific provisions which applied the rule of uniformity to acreage and not to value.

"All lands liable to taxation in this state, held by deed, grant or entry, shall be taxed equal and uniform, in such manner that no one hundred acres shall be taxed higher than another, except town lots which shall not be taxed higher than two hundred acres of land each. No freeman shall be taxed higher than one hundred acres, and no slave higher than two hundred acres on each poll."¹

From 1800 to 1860. During the first half of the nineteenth century, new and revised state constitutions gave more attention to the subject of taxation. The Illinois constitution of 1818 contained a more positive requirement than in any previous constitution that taxes should be levied by valuation so that each person will pay in proportion to the value of his property. The Missouri constitution of 1820 had a similar provision. That of Maine in 1818 and of Alabama in 1819 required taxes on lands and real estate to be assessed in proportion to valuation.

Other constitutions adopted during this period also contained provisions for taxation by valuation, with specifications as to the property to be taxed, and also some provisions as to exemptions. In the later years of this period, new and revised constitutions contained longer and more detailed provisions, including restrictions on state debt, as in the Illinois constitution of 1848. The second Ohio constitution of 1851 had still more explicit provisions as to the taxation by a uniform rule of all moneys, credits and other intangible property, as well as real and personal property. This probably marks the maximum of express constitutional provisions for a uniform general property tax.

From 1860 to 1900. In the latter part of the nineteenth century the state constitutional provisions on taxation and finance became still more detailed. In most states the general property tax remained the basis of the tax system, and requirements for uniformity were continued. But some modifications were authorized. Classification of property for taxation was authorized in the constitutions of Pennsylvania (1873), Colorado (1876), Georgia (1877), and Delaware (1897). Various forms of special taxes, usually in addition to the general property tax, were authorized—such as taxes on occupations and business, on corporations and on inheritances and incomes. On the other hand, poll taxes were abolished in many states; while numerous provisions relating to exemptions were adopted. Other provisions in a number of states prohibited the surrender of the power of taxation, and in some cases prohibited the commutation of taxes. Restrictions on state debt limits were adopted in most states, and in many states limits were also placed on municipal debts. In a number of states limitations on tax rates were placed in the constitutions.

¹ Tennessee Constitution of 1796, Art. I, Sec. 26.

Since 1900. Changes in the provisions of state constitutions relating to taxation have been proposed in large and increasing numbers since 1900; and a large proportion of proposed changes have been made by the adoption of constitutional amendments and by new or revised constitutions. From 1900 to 1906, 52 proposed amendments on taxation were submitted to popular vote, of which 37 were adopted and 15 failed. From 1907 to 1918, there have been 205 amendments submitted, of which 104 were adopted and 101 failed.

Constitutional Amendments on Taxation

Year.	Total submitted.	Adopted.	Failed.
1900.....	11	8	3
1901.....	2	2	0
1902.....	11	7	4
1903.....	3	2	1
1904.....	12	8	4
1905.....	1	0	1
1906.....	12	10	2
1907.....	1	0	1
1908.....	22	9	13
1910.....	25	15	10
1911.....	1	1	0
1912.....	44	17	27
1913.....	6	3	3
1914.....	35	17	18
1915.....	8	3	5
1916.....	28	15	13
1917.....	3	2	1
1918.....	32	22	10
Total.....	257	141	116

This movement has been widespread. One or more amendments have been submitted in all but six states (Vermont, Connecticut, Rhode Island, Delaware, New Jersey and Indiana). But some states have been much more active than others. Proposed amendments have been most numerous in Louisiana (35), California (30), and Missouri (23); and have also been frequent in Oregon (18), Utah (13), South Carolina (14), Minnesota (14) and Ohio (10). In Missouri and Minnesota most of the amendments proposed have failed.

A large number of these proposed amendments have been on matters of minor importance, such as changes in tax rates and methods of administration, taxes for specific purposes, small changes in exemptions, and (in South Carolina) relating to special assessments in particular cities and towns. But important changes in the rules and methods of taxation have also been proposed and adopted.

Amendments or new constitutions authorizing the classification of property for purposes of taxation have been submitted in about 20 states (in some states several times), and have been adopted in 11 states: Minnesota, Michigan, Oklahoma, New Mexico, Arizona, Louisiana, Kentucky, North Dakota, South Dakota, Maryland and Oregon.²

² An amendment authorizing classification received an affirmative vote in Ohio in 1918; but was held to conflict with another amendment to prevent double taxation which had been adopted by a larger vote.

A number of states have provided for more specific modifications of the general property tax, by provisions for exemptions or for special taxation of certain classes of property: Mortgages have been exempted in Utah, Louisiana, California, and North Carolina; laws to prevent double taxation of mortgages and the property mortgaged have been authorized in Ohio; and a special tax on intangible property has been authorized in Maine. State income taxes have been authorized in Virginia, Wisconsin, Ohio and Massachusetts; special corporation taxes in Ohio, South Dakota and Louisiana; special methods of taxing mines in Virginia, Nevada and Utah; and special taxes on or exemption of forest lands in Massachusetts and Ohio. Exemptions have been provided for vessels in California, Louisiana and Oregon; for property of educational institutions in California; and for farm products in the hands of the producer in Georgia.

Active efforts have also been made to obtain other and more fundamental changes in taxation. The separation of state and local taxation has been authorized in Oklahoma and more definitely established in California; but proposals for separation have failed in other states. The single tax on land values has been proposed in several states (sometimes in connection with provisions authorizing income, excise and inheritance taxes), but thus far has not been adopted in any state. Single tax proposals were rejected in Colorado (1902), Oregon (1912), Missouri (1912 and 1918), and California (1916 and 1918). An amendment authorizing local option in taxation was adopted in Oregon in 1910, but was repealed two years later. California in 1912 rejected local option in taxation.

Existing constitutional provisions. At the present time the states may be arranged in several groups, on the basis of the degree of legislative freedom, especially from the requirement of a uniform general property tax.

Five states have no definite constitutional restrictions relating to the subjects or methods of taxation, or only brief and indefinite phrases which are held by the courts not to limit legislative discretion. These are: New York, Connecticut, Rhode Island, Vermont and Iowa.

Fifteen state constitutions now have definite provisions authorizing the classification of property for taxation. These are: Pennsylvania (1873), Colorado (1876), Georgia (1877), Delaware (1897), Virginia (1902), Minnesota (1906), Oklahoma (1907), Michigan (1908), Arizona (1911), North Dakota and New Mexico (1914), Kentucky and Maryland (1915), Oregon (1917), South Dakota (1918).

Eight states have constitutional requirements for uniformity of taxation, which have been construed by the courts as permitting classification to some extent at least, and requiring uniformity only for each class. These are: New Jersey, North Carolina, Florida, Alabama, Mississippi, Indiana, Kansas and Wyoming.

Four states have provisions for uniformity, but also clauses which seem to permit classification. These are: Missouri (1875), Idaho and Montana (1889), and Louisiana (1916).

Eight states have provisions for uniform taxation of property (or provisions which have been construed as requiring uniformity) supplemented by provisions for special taxes of certain kinds. These are: California, special state taxes on corporations, etc., established in 1910, and separation of state and local revenues; Illinois, special taxes on certain specified occupations, businesses and franchises are authorized; Maine, amendment of 1913 authorizes taxation of intangible personal property at special rate; Massachusetts, amendments of 1912 and 1917 authorize special taxation of forests and incomes; Virginia, Nevada and Utah, recent amendments authorize special taxation of mines; Ohio, amendment of 1918 authorizes laws to prevent double taxation of mortgages and mortgaged property; Wisconsin, amendment of 1908 authorizes special taxes on incomes, privileges and occupations.

Eight states have constitutional provisions for uniform taxation which are held to debar classification. These are: Arkansas, Nebraska, New Hampshire, South Carolina, Tennessee, Texas, Washington and West Virginia.

In an appendix to this pamphlet are printed a number of typical constitutional provisions on taxation. That of New York represents the states with practically no specific provisions on taxation: that of Pennsylvania shows brief and liberal provisions authorizing classification; those of Kentucky, Maryland and South Dakota are more detailed classification provisions. The Wisconsin provision specifically authorizes an income tax, and the Minnesota provisions provide for classification with specific reference to gross earnings taxes on railroads. The Ohio provision illustrates the extreme form of the requirement of uniformity, modified by the amendment of 1918 to prevent double taxation in connection with mortgages; and with this is published the liberal classification amendment voted on in 1918. The Illinois provisions are typical of the states still requiring the uniform general property tax; but authorizing special taxes in addition. The California provisions show a detailed system of classification and of segregation of state and local revenues.

Tax Laws and their Operation. Some light may be thrown on the problem of taxation in Illinois by examining briefly some features of the tax laws and their operation in other states, especially those with less restrictive constitutional provisions than Illinois, where industrial and social conditions are comparable to those in Illinois, and where recent changes in taxation have been introduced. For this purpose, there will be considered conditions in the large and important eastern states of New York, Pennsylvania, Massachusetts and Maryland; in the middle-western states of Iowa, Kentucky, Minnesota and Wisconsin; and in California.

These states present a variety of illustrations of different methods of taxation, involving departures from the uniform general property tax. In most cases a much larger use is made of taxes on corporations for state revenue than in Illinois before 1919; and special taxes on mortgages, intangible property and incomes are successfully used in place of attempting to tax intangible property under the general property tax. The tax laws of these states will indicate some of the methods which could be considered in Illinois, if the restrictive provisions of the present constitution were relaxed or removed.

New York. The constitution of New York state contains practically no restrictions on the legislature in matters of taxation, but before 1880, the general property tax was in use as the principal source of state and local revenue. Serious complaints as to the escape of personal property from taxation, especially in the case of corporations, led to the introduction in 1880 of new franchise taxes on corporations. Since then corporation taxes have been greatly developed; and in addition an elaborate series of special taxes has been established—including an inheritance tax, an excise tax, a motor vehicle tax, a tax on transfers of shares of stock, a mortgage recording tax, a tax on secured debts or investments, and (in 1919) a tax on incomes.

Corporation taxes include organization and license fees, an annual franchise tax on capital stock, additional taxes on certain classes of corporations based on gross earnings and dividends; and a tax on the income of other business corporations. About 30 per cent of the general revenue of the state has been received from corporation taxes. Other important sources of state revenue have been the excise, inheritance and stock transfer taxes, and automobile license fees. For several years the direct property tax was almost eliminated for state revenue; but in recent years about 20 per cent of the state general revenue is from this source.

The mortgage recording tax is at the rate of five mills on the dollar; and the net revenue is divided equally between the state and county.

The tax on investments is at the rate of 20 cents per annum on each \$100 of face value. This applies to serial bonds, notes, debentures, etc., except bonds secured by mortgage on real property wholly within the state.

A tax of three per cent on the income of mercantile and manufacturing corporations was imposed in 1917, corporations subject to this tax being exempt from taxation on their personal property, and from the capital stock and the annual franchise tax. Two-thirds of the revenue from this tax goes to the state and one-third to the localities. In 1918 this tax yielded approximately \$18,000,000.

In 1919, this corporation income tax was extended to all "business corporations"—applying to all corporations except public service, insurance and financial companies. The rate was increased to 4½ per cent.

At the same time a new tax on individual incomes was imposed, at rates from 1 to 3 per cent on the total income in excess of the exemptions allowed under the United States income tax law. The revenue from this tax is to be divided, one-half to the state, and one-half to the towns and cities in proportion to the assessed valuation of real estate. Those subject to the income tax are exempt from taxation on certain intangible personal property (money, bonds, choses in action and shares of stock).

New York State Revenues, Fiscal year ended June 30, 1918.

Direct State Tax.....	\$13,203,046
Corporation Taxes	12,489,782
Franchise Taxes	9,588,856
Excise Taxes	11,045,392
Inheritance Tax	11,433,400
Fees of Public Officers.....	3,184,490
Stock Transfer Tax.....	5,312,032
Automobile licenses and fines.....	2,723,704
Investment tax	1,399,381
Organization tax	819,365
Mortgage Tax	939,866
Sundry and miscellaneous.....	4,218,490
Total general fund receipts.....	\$76,357,804
Common school fund.....	832,156
U. S. Deposit fund.....	322,326
Court and trust funds.....	67,555
Literature fund	20,912
State forest preserve fund.....	200,406
Public Highways	5,945,592
Palisades Interstate Park Fund.....	316,022
Public Administrator	17,827
Cornell University Fund.....	50,000
Canal Fund	13,845,867
Aggregate receipts	\$97,955,822

Pennsylvania. Under the Pennsylvania constitution, taxes must be levied and collected under general laws, and must be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

The uniform general property tax has never been imposed in Pennsylvania. Real estate is subject to county and other local taxes, as is certain specified classes of personal property; but there is no state tax on real estate. About two-thirds of the state revenue is collected from taxes on corporations. There is also a state tax on collateral inheritances, a system of business licenses, motor licenses and some other special taxes and fees.

Corporation loans and other intangible property are subject to a uniform tax of four mills on the dollar of fair cash valuation. The tax on corporate loans is deducted from the interest by the various corporations (public and private) and paid directly to the state treasury and accrues to the state. The tax on other intangible property (money at interest, credits, mortgages, and other securities) is collected by the counties. Before 1914, the proceeds of this tax were paid into the state treasury, and three-fourths of the amount was returned to the counties; but since then the whole proceeds are retained for county purposes.

The following table shows the tax receipts from corporate loans and the assessment and tax receipts from other intangible personality for a series of years:

Receipts from taxes on corporate loans and other intangible property in Pennsylvania.

Year.	Tax Receipts.		Assessment of other intangible personality.
	Corporate Loans.	Other intangible personality.	
1880.....	\$ 300,453	\$ 423,676	\$ 111,362,731
1885.....	555,323	620,971	145,300,000
1890.....	696,441	923,938	546,965,902
1895.....	822,381	2,307,936	622,136,295
1900.....	1,118,012	3,157,026	722,860,000
1905.....	1,677,185	3,446,906	885,240,000
1910.....	2,230,265	4,469,834	1,184,300,000
1913.....	2,300,823	5,312,175	1,402,500,000
1916.....	3,247,983	.....	.....

It will be noted that the assessment and tax receipts from intangible property increased rapidly after 1885; and the tax receipts from corporate loans have also gained steadily. In 1913, the last year when the tax from intangible personality was paid into the state treasury, the total receipts from both sources aggregated \$7,600,000, representing an aggregate of nearly \$2,000,000,000 of such property. This amounts to about one-half of the real estate subject to taxation in Pennsylvania.

Since 1913 the tax receipts from corporate loans have increased more rapidly, to \$3,247,983 in 1916. It is probable that the local tax on intangible personality (which is not now reported in the reports of the Auditor General) has also continued to increase.

Pennsylvania State Revenue, year ending November 30, 1916.

I. From corporations and associations:

National Banks	\$ 947,239
State Banks	152,900
Incorporated Savings Institutions.....	52,269
Trust Companies	1,297,929
Building and Loan Associations.....	23,310
Interest on deposits.....	47,058
Foreign Insurance Premiums.....	1,838,502
Capital Stock tax.....	14,233,932
Tax on corporation loans.....	3,247,983
Tax on Gross Receipts.....	2,164,103
Tax on Gross Premiums.....	130,578
Bonus on charter.....	720,635
Accrued interest and penalties.....	64,143
Loans of Counties, Municipalities and School Districts	727,970

II. From and through public officers:

Tax on writs, wills, deeds, etc.....	\$ 233,089
Tax on collateral inheritances.....	2,598,084
Pamphlet laws	60
Receipts from licenses.....	3,511,238

\$23,127,846

III. From other sources:

Motor (registration) licenses.....	\$2,448,924
State Highway construction.....	735,140
Minor taxes, fees and licenses.....	938,673

\$4,122,737

IV. Miscellaneous

\$548,279

Total \$36,663,039

Maryland. The constitution of Maryland from its first adoption in 1776 contained a provision that every person ought to contribute his proportion of public taxes according to his actual wealth in real or personal property. In 1915, a constitutional amendment was adopted definitely authorizing the classification of property for taxation, to be uniform within the taxing district and upon the class of property subject to the tax levy.

Before the adoption of this amendment, a special tax was imposed in 1896, on intangible personal property, including all bonds and certificates of indebtedness issued by corporations and stocks of corporations. Ordinary mortgages, book accounts of merchants and savings accounts are not included. The tax was at first levied at the uniform rate of 30 cents on the \$100 (3 mills on the dollar), for local purposes, plus the direct state property tax, which varied from 16 to 31 cents. Since 1914, a uniform rate of 45 cents is imposed, of which 15 cents is for the state and 30 cents for local purposes. Bank shares and savings banks are subject to another special tax.

The financial results of the special tax on intangible property is shown in the following table, giving the assessed valuation, tax rate and revenue for 1896 (the last year under the general property tax), 1897 (the first year under the special tax), 1915 and 1918.

Year.	Valuation.	Rate per \$100.	Revenue.
1896	\$ 6,000,000	\$2.17%	\$ 130,650
1897	58,703,795	.47%	280,310
1915	208,431,712	.45	937,942
1918	270,915,395	.45	1,219,119

Under the special tax, the assessed valuation of intangible property in 1897 was nearly ten times that of the preceding year when subject to the general property tax, and the revenue was more than doubled. Since then, these figures have increased more than fourfold.

In 1918 the assessed valuation of intangible personal property was 25 per cent of the assessed valuation of real and personal property subject to the general tax. About half of the state revenue is derived from a state tax on real and personal property, levied to meet expenses in connection with state loans and public schools. Other state revenues are from taxes on gross receipts, insurance companies, collateral inheritances and motor vehicle and other licenses.

Massachusetts. The Massachusetts constitution of 1780 provided for proportional taxes on property, and also for reasonable duties and excises. A constitutional amendment, adopted in 1915, definitely authorized an income tax, to be levied at a uniform rate upon incomes from the same class of property, and for the exemption from proportional taxes of property the income from which should be taxed.

State revenues are derived mainly from a state tax on general property, corporation and inheritance taxes and sundry licenses and fees, as shown below:

Massachusetts State Revenue, Year ending November 30, 1917.

State Tax	\$10,921,240
Corporation taxes	5,745,058
Inheritance taxes	3,964,593
Special assessments	765,475
Court fines and penalties.....	94,712
Unclaimed deposits and escheats.....	216,497
Liquor licenses	747,662
Other licenses	2,174,784
Fees	475,680
Reimbursement for services.....	1,324,614
Sales	907,360
Rents	164,886
Interest on deposits.....	248,818
Income of invested funds.....	44,576
Gifts and grants	78,963
Miscellaneous	35,344
Total revenue	\$27,910,264

Following the adoption of the income tax amendment, a classified income tax was imposed by the state in 1916, the proceeds to be distributed to the cities, towns and other local districts. There is a 6 per cent tax upon the income from intangible property, a 3 per cent tax upon dealings in intangible property, and a tax of $1\frac{1}{2}$ per cent upon incomes from annuities, trades and professions. Income from real estate, dividends of Massachusetts corporations, savings bank deposits, and from mortgages on Massachusetts real estate are not subject to the income tax, as the property from which the income is derived as otherwise taxed. Property, the income from which is taxed, is exempt from other general taxation.

From the proceeds of the income tax local communities are first reimbursed for the loss due to the exemption of intangible property; and the excess of income tax collections is also distributed to the local treasuries.

The financial results of this tax for the years 1917 and 1918 are shown below.

	1917	1918
Assessments (less abatements).....	\$12,299,958	\$14,387,339
Collections (less refunds).....	12,245,542	14,077,801
Uncollected	54,416	309,538
Reimbursement for personal property tax.....	8,135,769	7,967,775
Distribution of excess.....	3,547,000	4,300,000
War tax, 10 per cent, 1918.....	.....	1,237,057
Net administration cost.....	311,946	317,292
Available for distribution.....	250,826	255,677
Total	\$12,299,958	\$14,387,339

From the distribution of the excess over the reimbursement for the personal property tax, it appears that the income tax has yielded from \$3,500,000 to \$4,500,000 more than the former direct tax on intangible property. The tax commissioner reports a general feeling of satisfaction with the new tax. Those with large incomes are paying more than before; and many who paid nothing before are now contributing their share; while many of small means are given relief by the exemptions for small incomes allowed under the law.

Iowa. The constitution of Iowa does not require a uniform general property tax; but the state tax laws have imposed a general

property tax with some modifications. Beginning in 1912, a special tax was imposed on moneys and credits, at the rate of five mills on the dollar of actual value. Other real and personal property is assessed at one-fourth of actual value. The tax is levied by the county boards of supervisors and collected by the county treasurer; and the proceeds are divided on the same basis as other taxes.

In 1911, the last year when moneys and credits were listed with other personal property, the total of all personal property was \$134,-452,985. Since that year the valuation of moneys and credits and of other personal property have been as follows:

Year.	Moneys and credits (actual value).	Other personal property (listed at one-fourth value).
1912.....	\$188,773,775	\$ 93,762,629
1913.....	207,233,866	101,848,015
1914.....	250,218,178	110,698,770
1915.....	270,506,356	112,736,012
1916.....	275,361,750	115,506,427
1918.....	329,954,615	127,506,861

Kentucky. Before 1915, the constitution of Kentucky required a uniform general property tax. In that year a constitutional amendment was adopted authorizing the classification of property for taxation. In 1917 changes were made in the tax laws and a state tax commission was established with general supervisory power over assessments. The state tax rate was reduced from 55 to 40 cents on the \$100. The rate on bank deposits and live stock was reduced to 10 cents on the \$100. Money and credits were exempted from local taxation, and severe penalties were provided for their concealment from state assessment. A mortgage recording tax of 20 cents on the \$100 was imposed.

The results of the first year under the new laws are shown in the following statistics from the report of the state tax commission for 1918.

Assessments and State Taxes in Kentucky.

	Assessed valuation.			State Taxes.	
	1917.	1918.	Increase. Per cent.	1917.	1918.
Lands	\$391,694,806	\$545,453,422	39.2	\$3,926,094	\$3,548,183
Town lots.....	322,140,632	341,592,377	6.03		
Tangible personal property	128,692,966	232,808,251	80.8	708,811	931,233
Intangible personal property.....	68,650,880	246,348,379	258.8	377,579	985,393
Bank shares.....		37,775,621			179,143
Bank deposits.....	11,277,198	179,143,180	1,488.5	62,024	
Total	\$922,456,481	\$1,583,121,230	71.6		

It will be noted that real estate paid about 10 per cent less in state taxes in 1918 than in 1917. Taxes on tangible personal property were increased about 30 per cent. The assessment of intangible personal property increased about threefold, and the state taxes on such property nearly trebled. The assessment of bank deposits increased about 15 times, and at the low rate of 10 cents on the \$100 the state revenues from this source about trebled.

Minnesota. The constitution of Minnesota, as adopted in 1857, contained provisions for uniform taxation, and specifically provided for the taxation of money, credits and investments. But railroads have been taxed on the basis of gross earnings since the territorial charters; and this method was recognized by a constitutional amendment, adopted in 1871 which provided for a referendum on laws providing for gross earnings taxes on railroads. Since then gross earnings taxes have been established for most public service companies, except those of a local character.

In 1906 a classification amendment was adopted, with the following provisions: "The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes . . ." In 1907 a state tax commission was established, which at first gave special attention to the taxation of mines and mineral lands. In 1907 a mortgage recording tax was imposed in lieu of the taxation of mortgages as property;³ and in 1911 a tax of 3 mills on the dollar was imposed on moneys and credits, which were at the same time exempted from the general property tax.

In 1913 a general classification act was passed, placing property subject to ad valorem taxation into four classes, each assessed on a different basis, as follows: Class 1 (iron ore mined and unmined) is assessed at 50 per cent of full value; Class 2 (household goods) assessed at 25 per cent of full value; Class 3 (most tangible personal property and unplatted lands) assessed at $33\frac{1}{3}$ per cent of the full value; and Class 4 (urban real estate, bank stock, and certain structures and equipment on public utility property) assessed at 40 per cent of full value.

The financial results of the changes in the taxation of mines, mortgages and money and credits are shown in the following tables:

Taxation of Mines.

Year.	Assessed valuation.	State taxes.
1906	\$ 64,486,409	\$ 179,272
1907	191,706,682	671,489
1910	224,669,845	609,984
1917	296,126,032	1,505,761

³ The mortgage tax was at first 50 cents on the \$100. Later the rate was changed to 15 cents on mortgages for not more than 5 years, and 25 cents on mortgages for more than 5 years. The revenue is divided between the state, the county, and other local districts in which the real estate is situated.

Taxation of Mortgages, and Money and Credits.

	Money and Credits.			Mortgage tax collec- tions.
	No. Assessed.	Assessment.	Revenue.	
1909.....	6,200	\$ 13,919,806	\$379,754	\$385,910
1910.....	41,439	115,481,807	346,445	509,542
1911.....	87,688	284,968,875	854,907	522,108
1917.....	98,502	330,300,219	990,900	344,412
1918.....				312,893

The exemption from property taxes of mortgages on which the mortgage tax is paid caused some reduction of personal property assessments, estimated at about \$2,000,000, on which the taxes would have been about \$60,000—about one-fifth of the revenue received from the mortgage tax. The revenue from the 3 mill tax on money and credits soon exceeded that received under the general property tax and has steadily increased; while the burden has been more equitably distributed among the owners of such property, as shown by the great increase in the number of assessments.

The general system for the classification of tangible property for taxation is reported by the Minnesota tax commission to have given general satisfaction, and to have secured a reasonably accurate full value appraisement as a basis of taxation.

The principal sources of state revenue in Minnesota for the years 1902 and 1918 are shown in the table below:

Minnesota State Revenues.

	1902.	1918.
From taxes:		
General property	\$1,841,589	\$6,903,024
Railroads	1,659,296	6,237,571
Other public service Cos.....	100,786	425,362
Insurance Companies.....	216,515	620,934
Vessel tonnage	9,791	19,643
Inheritance	6,077	873,122
Liquor Licenses		25,622
Mortgage tax (direct state collections only).....		18,134
Fire marshal		34,115
Total taxes	\$3,834,057	\$15,157,531
From State institutions.....	919,415	5,628,363
From departments	412,177	2,589,137
Miscellaneous	2,339,793	5,008,264
Grand Total	\$7,505,443	\$28,383,296

Wisconsin. The constitution of Wisconsin before 1908 contained only the following provision on taxation: "The rules of taxation shall be uniform, and taxes shall be levied upon such property as the legislature may provide." The general property tax was however, established, except for public service corporations which before 1899 were taxed on the basis of gross receipts. Beginning in 1899, the taxation of public service corporations was placed on an ad valorem basis; but the assessments are made by the state tax com-

mission, and on these assessments the average rate of taxation is imposed by the state. There is also an inheritance tax, business and other licenses, and miscellaneous revenues.

An amendment to the state constitution, adopted in 1908, provided that: "Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided." In 1911 an income tax was substituted for the general property tax upon intangible and some classes of tangible personal property. Rates are graduated for individuals and partnerships, ranging from 1 to 6 per cent, with exemptions for small incomes. This tax is assessed by the state, and the net proceeds (less personal tax offsets) are apportioned as follows: 10 per cent to the state, 20 per cent to the county, and the balance to the city, village or town in which the tax was assessed, levied and collected—except that when this balance exceeds 2 per cent of the equalized valuation of a city, village or town, the excess is paid to the county to be distributed to the several cities, villages and towns of the county according to their school population.

The financial results of the Wisconsin income tax are shown in the table below:

Year.	Total income tax assessed.	Personal tax offsets.	Collections.	Delinquent.
1912.....	\$ 3,482,883	\$1,609,711	\$1,631,413	\$241,758
1913.....	4,084,447	1,895,327	1,935,846	251,326
1914.....	4,145,676	1,987,904	2,002,212	155,559
1915.....	3,837,370	1,825,641	1,906,441	105,286
1916.....	5,328,442	2,211,606	2,988,766	128,069
1917.....	9,482,620	3,307,435	6,037,719	137,465
1918.....	11,784,151	4,707,188	6,951,482	125,480

The taxes lost on personal property due to the exemption of small incomes have been estimated at \$700,000 a year. The additional revenue from the income tax was thus from twice to three times as much as the loss from exempted personal property for the first four years; and very much larger in the subsequent years. In the last three years both the tax assessed and the net collections have shown a remarkable increase. More than a third of the total income tax assessments and a considerably larger proportion of the collections are in Milwaukee county, which has about one-fifth of the total real estate assessment.

The following table gives the sources of public revenue in Wisconsin for the fiscal years 1912 and 1918, for the state government and for the aggregate of state and local governments. It will be noted that more than half of the state tax revenue was from special property and business taxes (from public service and financial companies), and that the proportion of such taxes has increased somewhat since 1912. The additional state revenue from the income tax is about 5 per cent of the state tax revenue. The state general property tax has increased at a smaller rate than the total state tax revenue, and

much less than the total state revenue. In the total of state and local revenues, the additional revenue from the income tax is about 7 per cent of the total tax revenue.

Wisconsin State and Local Revenues, Fiscal years ending in 1912 and 1918.

	State.		Total State and local.	
	1912.	1918.	1912.	1918.
General property tax.....	\$3,739,588	\$4,797,847	.....	.....
Special property and business taxes	4,546,143	6,334,900	.....	.....
Inheritance tax	783,528	517,358	.....	.....
Income tax .....	.....	616,102	.....	.....
Total taxes	\$9,069,260	\$12,266,208	\$40,525,650	\$61,697,840
Special Assessment taxes..	.....	.....	1,136,537	2,278,048
Licenses and permits.....	573,084	2,534,815	2,968,867	4,579,651
Grants (U. S.) and gifts....	113,115	189,176	169,594	303,437
Other general revenue.....	.....	461	308,875	356,815
Total general revenue.....	\$9,755,459	\$14,990,662	\$45,109,523	\$69,215,843
Commercial revenue	1,363,768	3,079,480	4,861,505	9,916,269
Loans	100,000	150,000	7,460,294	12,248,338
Investments	945,888	1,367,497	945,888	1,525,795
Trust receipts .....	.....	106,817	.....	1,930,235
Miscellaneous .....	.....	519	513,525	1,576,341
Total	\$12,165,117	\$19,694,976	\$58,890,737	\$96,412,872
Transfers between civil divisions	642,378	1,479,966	32,938,749	49,588,168
Grand Total	\$12,807,495	\$21,174,943	\$91,829,486	\$146,001,041

California. Taxation in California in recent years illustrates the working of a constitutional separation of state and local taxes. Until 1910, the general property tax was in use in California for both state and local revenues. In that year, after an investigation for six years, a constitutional amendment was adopted, which provided for state taxes (based mainly on gross earnings) on certain classes of public service corporations, insurance companies and banks, and exempted from local taxation the property of such public service corporations and the capital stock of banks. Definite rates for the state taxes were named in the constitutional provision; and these rates could only be changed by a two-thirds vote of both houses of the legislature.

The centralized state assessment of certain properties has been a distinct improvement, in securing a more equitable and a more complete valuation than by local assessment. The original rates for state taxes, however, soon proved inadequate; but by increasing the rates sufficient revenue has been secured.

On the other hand, the new system has not resulted in equalizing the burdens of taxation, either as between the corporations and other tax payers, or as between the various corporations; nor has it corrected the evil of undervaluation in local assessments. State revenues

have been made less flexible, yet the absence of a direct state tax has removed a check on increasing expenditures; while the loss to local districts from the exemption of local property from local taxation was not equitably adjusted.

A special tax commission presented a report in 1917 calling attention to these difficulties, and recommended changes both in the tax laws and the constitutional provisions, especially noting the difficulties caused by the detailed and specific requirements in the constitution, and advocating giving greater freedom to the legislature in matters of taxation, subject to a referendum.

VII. COMMENTS AND CONCLUSIONS ON TAXATION

Many other variations in methods of taxation are to be found in the tax laws of other states and countries; and still other methods have been proposed at different times and places. It is impossible to examine in detail all of the various methods and proposals; but a brief mention may be made of some which are likely to be actively discussed.

Single Tax. One proposal vigorously advocated for many years is that for the single tax on land values, which aims ultimately at exempting from taxation all personal property and improvements on lands, as well as all forms of indirect taxation. This proposal has been proposed primarily as a theory of social reform; but the fiscal policy involved has one point of similarity to that of the uniform general property tax, in assuming that an ideal system of taxation can be based on a single principle; and the most ardent supporters of the single tax also agree with the conservative supporters of the uniform general property tax in urging that their particular system be definitely provided for in the constitution.

The single tax has never been applied in a complete and thorough going manner. To provide for it in the constitution as the sole method of taxation would be open to the same fundamental objection as is made to the requirement for a uniform general property tax, that this will tie the hands of the legislature, and prevent changes in methods of taxation which may be needed to meet new conditions and the fiscal needs of the government. It is also urged that it involves, in principle, the confiscation of existing property rights, and is in fact in direct antagonism to the institution of private property.

Various other proposals have been made from time to time, based on a partial acceptance of single tax views, which have been supported by less radical groups, and also by some pronounced single taxers as steps toward their complete program. Such proposals include the exemption of personal property from direct taxation, the partial or gradual exemption of improvements on land, and the taxation of the increment of land values. Several constitutional amendments have been submitted in American states for land value taxation, combined with income, inheritance and franchise taxes. Proposals for complete local option in taxation have also been made, with a view to securing the adoption of the single tax in certain local districts; though the single taxer would oppose local option, if the single tax could be applied to a whole state or the nation.

Some of these proposals merit consideration. Exemptions of small amounts of personal property and of small incomes are not uncommon in existing tax laws, and in the actual practice of assessors in Illinois; and less frequently a particular class of intangible property (as mortgages) has been exempted, so as to avoid double taxation. Exemptions of intangible property from local taxation may also be a convenient method in working out a partial separation of state and local sources of revenue.

• Exemption of buildings and improvements has been applied on a considerable scale in a number of new and rapidly growing communities in western Canada. Investigation of the results indicates that under such conditions, this has not proven disastrous; and in some cases has produced beneficial results; but that the land tax alone cannot be relied on under all conditions to yield sufficient revenue, and that in times of depression is likely to give rise to serious problems.¹

The special taxation of the future increment of land values has been applied in Germany and Great Britain; and in theory such a tax appears to merit serious consideration. The actual results thus far, however, have not yielded any large additional revenue. The problem of administration is not easy; and there are difficult problems in differentiating between unearned increment and that due to improvements and management.²

Single tax theory seems to assume a uniform method for the taxation of land values. But recent discussions of taxation have indicated the need for varying the rule of uniformity even in the taxation of land. The taxation of forest and mineral lands appears to call for special treatment, in the interest of conservation of natural resources.³ The different bases actually used in the assessment of urban and rural lands suggests the inquiry whether some difference may be justified, as has been provided by law in Minnesota.

Local variations in local taxes also seem to be advisable to some extent; and some home rule or local option in taxation may properly be authorized. But it is doubtful if this can be definitely adjusted in a constitutional provision to meet the needs of varying times and conditions. The present provisions of the Illinois constitution preventing the General Assembly from imposing local taxes and requiring local taxes to be imposed by local authorities may well be continued.

A committee of the National Tax Association appointed to prepare a plan for a model system of state taxation presented a report at the Chicago conference in 1919 approving the following fundamental principles, which it finds in a general way at the basis of American tax laws, though at times applied by faulty methods:

"1. That every person of taxable ability should pay some sort of a direct personal tax to the government from which he receives the personal benefits that government confers".

¹ Haig, R. M. *The Exemption of Improvements from Taxation in Canada and the United States*.

² For recent discussions of the single tax and land value taxation, See: Yetta Scheffel: *The Taxation of Land Value* (1916), and Arthur N. Young: *The Single Tax Movement in the United States* (1916).

³ L. E. Young: *Mine Taxation in the United States* (University of Illinois Studies in the Social Sciences).

"2. That tangible property, by whomsoever owned, should be taxed by the jurisdiction in which it is located, because it there receives protection, and

"3. That business carried on for profit in any locality should be taxed for the benefit it receives."

Conclusions. The general conclusion which may be drawn from this analysis of taxation methods in Illinois and elsewhere is that taxation is not a simple problem which can be settled by a single phrase—either of uniformity or single tax; but that under modern social conditions it is a highly complex affair, which requires continuous study and frequent modifications, to meet changing conditions and the needs of the government. To attempt to establish any one system of taxation in the state constitution seems clearly to be unwise; and constitutional provisions should leave the largest possible discretion to the law making authorities.

In chapter IV of this pamphlet (pp. 232-235) has been set forth the inequalities and injustices of the present tax system in Illinois, which seem to be inevitable under the requirement for a uniform general property tax; and the serious difficulties which have arisen under the detailed provisions of the present Illinois constitution relating to taxation.

As shown in chapter V (pp. 243-244), there has been a marked tendency in recent years toward relaxing the restrictions on the power of the legislature over taxation; and most state constitutions now contain much more liberal provisions on this subject than that of Illinois.

The Supreme Court of the United States has distinctly recognized that a single uniform system of taxing all kinds of property will prove unjust and unequal. As stated by Justice Lamar, in the case of the Pacific Express Company v. Seibert:

"This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of these terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity and equality in taxation, and of a just adaptation of property to its burdens."⁴

In the case of Home Insurance Co. v. New York, Justice Field said:

"The [fourteenth] amendment does not prevent the classification of property for taxation—subjecting one kind of property to one rate of taxation, and another kind of property to a different rate—dis-

⁴ 142 U. S. 339, 351 (1891).

tinguishing between franchises, licenses, and privileges, and visible and tangible property, and between real and personal property".⁵

Justice Bradley, in the case of *Bell's Gap R. Co. v. Pennsylvania*, stated:

"It [a State] may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and may not tax securities for payment of money, it may allow deductions for indebtedness or not allow them . . . the 14th amendment was not intended to compel the state to adopt an iron rule of taxation. If that were its proper construction . . . it would render nugatory those discriminations which the best interests of society require."⁶

Some constitutional limitations on the general assembly seem however to be desirable. Care should be taken to prevent the grant of contractual rights by exemptions, by the surrender or suspension of taxation, or by any special form of taxation. It should also be provided that taxation should be imposed by general law, uniform upon persons and property of the same class. Suggested constitutional provisions based on these views and similar to those recently adopted in such states as Minnesota and Kentucky, have been formulated in a pamphlet issued by the Civic Federation of Chicago, as follows:

1. The right of taxation shall never be surrendered, suspended nor contracted away.

2. The general assembly shall provide for the taxation of persons and values by general law, so that each tax levied shall be uniform upon persons and values of the same class.

3. Exemption, if any, shall be by general law and shall not be contractual, but may be revoked by the general assembly at any time.⁷

If, however, such provisions are considered inadequate and the constitutional convention wishes to make more definite provisions, a tentative draft, including some of the existing provisions in the constitution of Illinois, may be submitted for consideration as follows:

Suggested Constitutional Provisions: 1. Taxes shall be levied and collected under general laws and for public purposes only; and shall be uniform upon all persons and property of the same class within the jurisdiction of the body imposing the same.⁸ Taxes may also be levied on incomes, privileges and occupations; and such taxes may be graduated and progressive, and reasonable exemptions may be provided.

⁵ 134 U. S. 594, 606 (1889).

⁶ 134 U. S. 232, 237 (1889).

⁷ Study No. 2, Taxation and Public Finance, p. 34.

⁸ The question should be considered whether this phrase meets the difficulties noted on page 241 under the present requirement for complete uniformity within each jurisdiction imposing the tax.

2. The power of taxation shall never be surrendered, suspended or contracted away; and exemptions, if any, shall be by general law and shall be revocable by the general assembly at any time.

3 The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof for corporate purposes; but all municipal corporations shall be required to levy taxes for the payment of debts contracted under authority of law, and shall be vested with authority, to levy and collect taxes for local purposes—within limits to be prescribed by law.

4. Municipal corporations shall be vested with power to make local improvements and to maintain local services by special assessment, by special taxation of contiguous property, or otherwise, as may be provided by law.

In states with provisions for the initiative and referendum, tax laws are subject to these methods of popular control. But the referendum may be made inapplicable if a law is declared an emergency measure by a special vote of the legislature; and in Ohio tax laws are expressly exempted from the referendum. On the other hand, in Oregon, it is provided that tax laws, shall not be declared emergency measures; and the Kentucky taxation amendment of 1915 expressly provides for a referendum on certain tax laws. It may be observed that in case of a new tax law, there is more than the usual probability that those opposed to the new taxes will endeavor to file a referendum petition for the purpose of delaying the new taxes, even if there is little likelihood of defeating the law by the referendum vote. If a referendum is authorized for tax laws, it will be important to provide for an early vote; or the referendum may be authorized as a method of repealing the law, without preventing its going into effect in the meantime.

VIII. APPROPRIATION AND BUDGET METHODS

A budget properly consists of a financial plan, involving an estimate of expenditures for a given financial period and also an estimate of revenues from which such expenditures are to be met. Generally the estimate of expenditures receives the greater degree of consideration in this country. This is partly due to the fact that ordinarily revenues come into the treasury as a result of the operation of permanent laws, and do not have to be considered as a whole at certain regular periods, whereas the more common plan in this country as well as in others is that there shall be a limited appropriation period, and that within such limited period a new set of appropriations shall be made for the conduct of governmental affairs during the succeeding period.

The Budget Situation in Illinois. The Governor is the center of the budgetary organization of the state of Illinois in that he has certain definite functions with respect both to the preparation of appropriation estimates and to the final approval of such estimates after they have been adopted by the general assembly. Also to some extent he controls the revenue machinery and the expenditures of the state after appropriations have been made.

By Article V, Section 7 of the constitution it is made the duty of the governor, at the commencement of each regular session of the general assembly to "present estimates of the amount of money required to be raised by taxation for all purposes." This duty imposed upon the governor has only recently come to be exercised in any effective manner. Legislation of 1913 imposed upon the Legislative Reference Bureau the duty of collecting estimates from the various state offices, and of submitting such estimates to the general assembly. Under this legislation the governor in fact had little share in the preparation of estimates, although he was chairman of the board which controlled the Legislative Reference Bureau. In 1917, however, the civil administrative code organized the Department of Finance, imposed upon this department the duty of preparing estimates, and requires the governor to submit to the general assembly a budget "embracing therein the amounts recommended by him to be appropriated to the respective departments, offices and institutions, and for all other public purposes, the estimated revenues from taxation, the estimated revenues from sources other than taxation, and an estimate of the amount required to be raised by taxation." The governor is required

to transmit with the budget the estimates of receipts and expenditures of the elective officers in the executive and judicial departments and of the University of Illinois. That is, for these officers and for the University of Illinois the governor not only submits his estimates of needed appropriations but also in addition the estimates prepared by these officers themselves.

Under the legislation of 1917, a budget was prepared in 1919 and the governor exercised an effective control over the appropriations made to the officers directly under his supervision, although not such a control over the appropriations for other elective state officers. The Governor appeared in person at a joint session of the general assembly, and for the session of 1919 it may be said that there was a definite budget system for the state, although this system applied most effectively to the officers directly responsible to the governor.

The governor has had a large negative share in the making of appropriations since the adoption of a constitutional amendment in 1884 conferring upon him the power to veto items of appropriations. Before 1884 the governor found it necessary to disapprove an appropriation bill in whole or to approve it as a whole. By a constitutional amendment in 1884 bills making appropriations were required to "specify the objects and purposes for which the same are made and appropriate to them respectively their several amounts in distinct items and sections," and an authority was vested in the governor to veto any item in such a bill.

The governor's exercise of the veto power both over appropriation bills as a whole and over items in appropriation bills has primarily been exercised since 1900.¹ Governor Deneen in 1905 vetoed items to the extent of \$845,000 and in 1907 to the amount of \$632,500. Governor Dunne in 1913 vetoed items amounting to \$1,040,000, and in 1915 items amounting to \$1,925,000.

Governor Deneen in 1907² disapproved a part of an item, and Governor Dunne in 1913 and 1915 also disapproved parts of items. The constitution authorized the governor to veto "distinct items", and the supreme court in the case of *Fergus v. Russel*³ took the view almost necessarily that this did not permit a veto of parts of items, and that where an appropriation was made as so much per annum, such an appropriation amounted to but one item, although it appropriated the same amount for each of two years.

Although the governor's veto power clearly does not extend to parts of items in an appropriation bill, the question still presents itself as to what is an item of such a bill. As to this, Article V, Section 16 of the constitution provides that appropriation bills shall "specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sec-

¹ See Debel, N. H., *The Governor's Veto in Illinois*, pp. 118-125.

² *Senate Journal*, 1754.

³ 270 Ill. 304 (1915) pp. 348-352; As to veto of parts of items in other states see: *Commonwealth v. Barnett*, 199 Pa. State, 161, (1901); *Regents of the University v. Trapp*, 28 Okla., 23 (1911); *Fulmore v. Lane*, 104 Tex. 499, (1911); *State v. Holder*, 76 Miss. 158, (1898); *State ex rel. Jamison v. Forsythe*, 21 Wyo. 359, (1913); *Nowell v. Harrington*, 122 Md. 487 (1914).

tions." It will be noted that this not only requires the appropriations to be made in distinct items, but also that the objects and purposes shall be specified. This constitutional provision not only requires an itemized appropriation but also an appropriation definite in amount, and the supreme court has said that indefinite appropriations are invalid under Section 16 of Article V, and also under Section 18 of Article IV; for Section 18 of Article IV provides that the aggregate amount of appropriations shall not exceed the amount of revenue authorized; and to appropriate indefinitely would make it impossible to know what the total amount of appropriation is, which is to be limited by the total amount of revenue.⁴ As to the matter of definiteness of appropriations a clear rule has been established by the court which makes no trouble.

As to what constitutes an item and as to what amount of discretion vests in the general assembly in making lump sum appropriations, a good deal of difficulty still presents itself. In the case of *People ex rel. State Board of Agriculture v. Brady*,⁵ the court said that "the word item is in common use and well understood as a separate entry in an account or a schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries." The statement of the court and its decision in this case were clearly right, for here the general assembly had itemized an appropriation to the State Board of Agriculture and some of the items had been vetoed by the governor. The contention of the Board that the totals constituted the item and that the details were not items subject to the governor's veto was clearly untenable, although some support for this view was found in decisions by the supreme courts of Oklahoma and Texas.⁶ The *State Board of Agriculture* case, while it defines the term "items", defines it with reference to a case in which there was no issue regarding the power of the general assembly to make lump sum appropriations or as to the power of the general assembly to determine the size of the items.

The case of *Mitchell v. Lowden*⁷ involved an issue regarding the \$60,000,000 bond issue and the provision that the money derived from this bond issue should be spent upon a state system of hard roads, the routes for such system of hard roads being outlined in detail. In this case the court said:

"The single purpose for which the money appropriated is to be used in the construction of a system of roads. There will, perhaps, be many contracts for the construction of parts of the roads, but each contract is not an item which can be separately stated and for which a definite amount can be appropriated. There will, perhaps, be many contracts for the purchase of materials and tools, but each contract of purchase is not an item which can be separately stated, and for which a definite amount can be appropriated. Nor is the purchase of all of one kind of material such an item. All are items of

⁴ *Fergus v. Russel*, 270 Ill. 304 (1915) p. 333.

⁵ 277 Ill. 124 (1917).

⁶ *Regents of the University v. Trapp*, 28 Okla. 23, (1911); *Fulmore v. Lane*, 104 Tex. 499 (1911).

⁷ 288 Ill. 327. See also *Martens v. Brady* 264 Ill. 178 (1914).

the aggregate, but the constitution does not require an itemization, in minute detail, of every expenditure of money in connection with the general purpose for which an appropriation is made. The legislature could not know at the time of making the appropriation, even approximately, the amount required for each of the various contracts or purchases. A similar objection was made to three acts appropriating sums of money in gross for building and maintaining state-aid roads, in *Martens v. Brady*, 264 Ill. 178, and was held invalid. The original section 16 of Article V made no special reference to appropriations. So much of the section as now refers to bills making appropriations of money was adopted as an amendment in 1884. At the next session after the adoption of this amendment the legislature made an appropriation of \$200,000 for the purchase of a site and constructing buildings thereon for the soldiers' and sailors' home and for fitting the same for occupancy, without separating the amount into items. (Laws of 1885, p. 16). The same legislature made a similar appropriation of \$73,000 for the construction and completion of the main building of the Eastern Illinois Hospital for the Insane (Laws of 1885, p. 13), and numerous other like appropriations. It has been the customary, if not the uniform, method of making appropriations for the construction of buildings and other public works, and the Supreme Court building was constructed and the Centennial Memorial building is in process of construction by means of appropriations so made. (Laws of 1895, p. 76; Laws of 1907, p. 74; Laws of 1917, p. 66.) This legislative construction, while not obligatory upon the court, is entitled to consideration and we regard it as according with the constitution."

The general assembly in 1917 adopted a policy of using a certain standard terminology throughout all appropriation bills, and in connection with the adoption of this terminology it consolidated into larger items a number of details which had been specifically appropriated for in earlier sessions, without uniformity, throughout the several bills. Objection was made to this consolidation of matters previously appropriated for in separate items, on the ground that this did not constitute a sufficient itemization. Under the present constitution this view seems untenable, and the degree of detail in the itemization of appropriations apparently rests within the discretion of the general assembly. Certainly the constitutional provision was not intended to prevent a uniform classification of appropriations so that a uniform bookkeeping system might be devised. The uniform classification of appropriations adopted in 1917 has been applied with some modification to the appropriations made in 1919.

In both 1917 and 1919 detailed itemization has remained for employes (aside from the charitable institutions in 1917 and the charitable and penal institutions in 1919). The practice of appropriating in lump sum for the salaries of employes of charitable institutions has been in existence since 1909, although this plan was adopted for penal institutions only in 1919. There seems no constitutional objection to the appropriation in lump sum of salaries for these institutions, and to the application of the same plan to the other departments and offices

of the state government, if this should be desired in the future. Under a plan of this sort the items of appropriation for salaries become distinctly large ones. To this extent the governor's power of detailed veto is diminished. However, there is no constitutional guaranty as to the detail in which the governor's veto power over items may be exercised.

The plan of appropriating generally for a certain purpose, and then apportioning by the same act the funds so appropriated to that purpose, is one which may fall within the constitutional prohibition. The charities appropriation act of 1917 and the charitable and penal appropriation act of 1919 made appropriations generally for all of the institutions as a unit, and then apportioned these appropriations specifically among the various institutions, with a provision that the apportionment should be followed as nearly as possible but that the "Department of Public Welfare with the consent in writing of the Department of Finance may apportion the amount stated in the several items (except in the item of permanent improvements) among the several state charitable, penal and reformatory institutions according to the varying needs of such institutions, not changing however the objects and purposes for which such appropriations are made."⁸ The apportionment here made by the statute is purely tentative and merely supplements a general appropriation of specific amounts, but it is possible that this might be held to violate the constitutional requirement that appropriation bills shall "specify the objects and purposes for which they are made;" and possibly also the constitutional provision that "no money shall be diverted from an appropriation made for any purpose, or taken from any fund whatever either by joint or separate resolution" (Article IV, Section 17), although this provision seems to relate only to the diversion of money from an appropriation by joint or separate resolution of the general assembly. The plan of the acts just referred to is of course a plan adopted by law and not by joint or separate resolution.

The case of *Fergus v. Russel*⁹ says that "to make a valid appropriation a definite sum of money must be appropriated for the purpose specified". If an appropriation act merely said that an appropriation sufficient to meet the expenses of an institution or a group of institutions is being made this would clearly be improper. Technically, under the view taken by the court, the appropriations above referred to are definite as general appropriations for the conduct of all institutions as a group, although if the apportionment to specific institutions be regarded as an appropriation it is indefinite, in as much as the final amount to go to each institution rests in the discretion of the director of public welfare subject to the approval of the director of finance. The purpose accomplished by the appropriation acts here under discussion could perhaps be constitutionally accomplished by omitting the detailed apportionment to specific institutions, although this would diminish the control of the general assembly without increasing in any way the power of the governor.

⁸ Laws 1917 page 72; 1919 page 145.

⁹ 270 Ill. page 333.

The question here under discussion is important in view of the fact that the governor actually vetoed certain items of the apportionment to charitable institutions in 1917. If such an apportionment is to be regarded as made up of items subject to the governor's veto, the apportionment is probably invalid as an itemization, because of indefiniteness, and the constitution should make sure that the plan now employed may be continued without constitutional doubt, if there is such at present.

With respect to the governor's veto power over appropriations, it should be said that here as with respect to the governor's veto power generally, the power is now substantially absolute. All of the larger appropriation acts are passed by the general assembly just prior to the taking of the final recess, and ordinarily a quorum of the two houses does not assemble after that recess to hear the governor's veto messages. The veto under these conditions is absolute because there is no possibility of its being overcome in the two houses. For this reason the governor's control over appropriations after they have been passed by the general assembly is a negative one. A satisfactory result with respect to appropriations can not be accomplished as between the governor and the general assembly by a purely negative relation.

With respect to officers under the governor's control a much more satisfactory relationship in the determination of appropriation policy has been worked out through the civil administrative code, enacted in 1917. For appropriations to officers not directly under the control of the governor, the governor under the civil administrative code makes recommendations, but these recommendations can not be final and the governor must transmit with his recommendations the original estimates of the other elective state officers. As a matter of fact the experience of 1919 indicates that the governor can not exercise an effective control over the estimates and appropriations of state officers who are by popular election upon much the same political basis as the governor himself.

Under the constitution, the governor has certain other functions with respect to budget matters. By virtue of Article V, Section 20, a semi-annual report is to be made to the governor by the officers of the executive department and of the public institutions of the state of all moneys received or disbursed by them severally from all sources; and by Article V, Section 21, the governor may require information in writing under oath from the officers of the executive department and all officers and managers of state institutions upon any subject relating to the condition, management and expenses of their respective offices. These sections measure the extent of the governor's power over elective state officers, and under the authority of these sections the governor now requires a quarterly financial statement from each elective state officer of the executive department.

With respect to the state officers directly under his supervision, appropriation acts for a number of years provided that bills should be approved by the governor before payment. The office of institutional auditor was established in the governor's office for the purpose

of exercising this control vested in the governor over expenditures. The civil administrative code enacted in 1917 extended this authority, vesting the control over the approval of bills in the department of finance, and authorizing that department to require uniform financial reports from the various officers and institutions under the control of the governor. So far as the officers immediately under the governor are concerned, a fairly systematic and satisfactory system of financial reports has been worked out, although this has not yet been accomplished for the elective state officers.

In connection with this discussion, it should of course be borne in mind that the approval of bills by the department of finance is a preliminary approval, and that under the constitution express provision is made that "no money shall be drawn from the treasury except in pursuance of an appropriation made by law and on the presentation of a warrant issued by the auditor thereon." By the constitution the auditor is the final authority to determine whether bills shall or shall not be paid, and all preliminary approvals required by statute of the department of finance or the governor or the civil service commission are useless unless the auditor decides that a warrant should be issued.¹⁰

Under the terms of the constitution special safeguards are provided as to contracts with respect to fuel, stationery, printing paper, and with respect to printing ordered by the general assembly.¹¹ In the case of these contracts the general assembly is required to fix a maximum price, the contracts are expressly required to be let to the lowest responsible bidder, and all such contracts are made subject to the approval of the governor. With respect to the officers and institutions directly under the supervision of the governor, a control over purchases and contracts, other than those just mentioned, has been established through the civil administrative code, and this supervision is exercised, with respect to the details of purchasing, by the director of public works and buildings, and with respect to the general methods of purchasing, by the director of the department of finance. That is, with respect to officers and institutions directly under the control of the governor, the supervision over contracts and purchases is exercised by officers appointed by the governor and directly responsible to him. For the functions under the elective state officers, however, the governor's control does not exist, except so far as such control is actually exercised under the terms of Article IV, Section 25 of the constitution.

A proper budget procedure involves a close correlation of revenues and expenditures. In the discussion here of the governor's functions with respect to budget matters, reference should be made to the fact that the state tax rate is, under authority of statute, fixed by the governor, auditor and treasurer.

The review just given of the governor's relationship to appropriations and expenditures indicates that under the existing constitution a large amount of authority vests in the governor, or can by

¹⁰ Article IV, Section 17.

¹¹ Article IV, Section 25.

statute be conferred upon him, with respect both to the preparation of estimates of appropriations and with respect to the expenditures of money. The civil administrative code has given to the governor the bulk of power which may be conferred upon him, and this power was exercised in connection with the appropriations made for the biennium 1919-1921.

Relation of Appropriations to Revenue. State revenues are derived from sources provided by permanent tax laws, and such laws do not require revision at the time the biennial appropriations are made. The revenue side of the budget therefore receives and is likely to receive less attention than the appropriation side. The constitution provides that the appropriations for the fiscal period shall not exceed the amount of revenue authorized by law to be raised in such time. An effort was made in the case of *Fergus v. Brady*¹² to have the court say that the amount of appropriations should depend upon the amount of revenue to be raised by the state tax rate, in view of the fact that it is possible to estimate with some degree of closeness the amount likely to be produced by the state tax rate. It was urged that this view should be taken because of the importance of estimating in advance the amounts likely to be derived from all sources of revenue, and that if the standard of total appropriations were rendered too indefinite, the limitation of appropriations to the amount of revenue authorized to be raised during the same time became substantially ineffective.

The supreme court declined to take such a view, but said: "Section 18 prohibits appropriations in excess of the revenue authorized by law to be raised in the period for which appropriations are made, but necessarily revenue, whether derived from one source or another in the future, must always be estimated and never can be a fixed and certain sum. Circumstances may occur that will cause the reasonable expectations of the general assembly as to the amount of revenue to miscarry or not to be fulfilled, so that there may be a temporary deficiency. To meet that condition which may arise from failure in making collections of taxes, or result from decreased revenue from other sources, the section provides that in case of failure of revenue the general assembly may contract debts, never to exceed \$250,000. This debt is only to be created by borrowing money—not by incurring debts or making contracts, since the section requires that the moneys thus borrowed shall be applied to the purpose for which they were obtained or to pay the debt thus created, and to no other purpose. No other debt can be contracted, except for the purpose of repelling invasion, suppressing insurrection or defending the state in war except upon a vote of the people in a general election."

Under the practice as it exists in this state there is no equivalence between the appropriation period and the revenue period. The general assembly at its regular session makes appropriations for the next

¹² 277 Ill. 272 (1917), p. 278.

biennial period, and at the same time authorizes a state tax rate regarded as sufficient to meet such expenses, when other sources of revenue have also been taken into consideration. The tax levy act, although in theory applying to the same period as do the appropriations made at the same time, does not actually so apply. The appropriations made by the general assembly in 1919 are for the period beginning July 1, 1919 and ending September 30, 1921, although the appropriations are primarily made to end July 1, 1921. For the purposes of this discussion we may assume that the appropriations cover a two-year period from July 1, 1919. The tax levy authorized at the same time provides for the fixing of the tax rate in December 1919, and December 1920, the tax money on the basis of the levy of 1919 not coming into the treasury until April, 1920, substantially nine months after the appropriations become available. The payments from the state treasury upon appropriations effective July 1, 1919 to April, 1920, must, therefore, be made from funds derived from a tax levy authorized by the general assembly of 1917, the general assembly of 1917 having provided for a tax levy upon a different and smaller set of appropriations. That is, instead of the appropriation and the tax levy coinciding in the period covered, the appropriation period is under present law substantially always at least nine months ahead of the period for which taxes are levied to meet such appropriations.

Payments from the state treasury on the basis of appropriations are made from any money available in the state treasury, and if payments were to be made only from the tax levy authorized by the session making the appropriations, none of the regular appropriations for the period 1919-1921 could actually be paid before April, 1920. It is out of the question to do this or to avoid the payment of appropriations from other funds than the tax levy authorized to meet such appropriations. The state treasury has never regarded itself as having a deficit merely because the tax levy for a particular year did not meet the appropriations for that year, but the revenues coming into the state treasury either from the general tax levy or from other sources have always been regarded as available for payment of any obligation existing at that time against the state. No record is kept now by annual periods or by the biennial appropriation period of the moneys attributed to each year which are derived from all sources of revenue. In view of this fact it is impossible to obtain a statement of equivalence between the annual expenditures and the annual income of the state, or between the expenditures and the income of the state for the appropriation period. Under these conditions it would be substantially impossible for a court to enforce in any effective way a provision that the appropriations for the specific period shall not exceed the amount of money authorized by law to be raised within the same time. The constitution lays down the rule that the state shall, with certain noted exceptions, live within its income but does not prescribe any means of effectively enforcing this rule.

Attention should be called also to the fact that the revenue to be raised by the state tax rates in Illinois is now determined as a mere incident to the appropriations. The appropriation acts are passed, and

a tax levy act is then passed for the raising of a lump sum regarded as sufficient (with other sources of revenue) to raise the amount appropriated. The fixing of the tax rate by the governor, auditor and treasurer is then theoretically a mere clerical task, though these officers exercise an actual discretion, and by raising or lowering the state tax rate actually bring about a rough correspondence between expenditures and revenue.¹³ This correspondence is only a rough one because of the lack of equivalence between the revenue and appropriation periods; and the power to fix the tax rate has at times been employed for political considerations rather than for the purpose of balancing revenues and expenditures. At several times in recent years the state treasury has been practically empty, although large expenditures had to be incurred on the basis of appropriations already made, and the bills of the state have had to remain unpaid until further revenues came into the treasury.

The constitution requires that "all taxes levied for state purposes shall be paid into the state treasury."¹⁴ It also requires by Article V, Section 23 that all fees payable by law for any services performed by the elective executive officials shall be paid in advance into the state treasury. In Article IV, Section 17, the constitution provides that no money shall be drawn from the state treasury except in pursuance of an appropriation made by law. The constitutional provisions just referred to seem to imply that any money paid to a state officer or employe, for the performance of governmental functions, shall be regarded as money belonging to the state, and as technically coming into the state treasury when it is paid to an officer or employe of the state. For a long time fees of numerous offices were employed as a means of defraying the expenses of such offices, and were not formally paid into the treasury of the state. This situation was changed almost completely by an act of 1911,¹⁵ although some cases of the retention of fees in payment for services still remain with respect to state offices. It is doubtful, however, whether any such fees can be constitutionally retained.

With respect to the matter of retaining funds derived from fees or other sources, the state charitable and penal institutions present a peculiar problem. A number of these institutions have industrial undertakings which should be run as businesses upon an independent basis, so that surpluses if any should be turned into the state treasury, but the expense of running the business be borne from the receipts of the business itself. Such an arrangement cannot be made directly, but the situation seems to be constitutionally met by legislation of 1919. Under this legislation the proceeds of industrial operations at certain institutions are turned into the state treasury and are held as a special fund to be known as the working fund. A specific appropriation is then made from the state treasury for the operation of industries, the payments from this appropriation to be limited to the receipts into the working fund set up as an independent fund. In this

¹³ See *Edwards v. People*, 88 Ill. 340 (1878).

¹⁴ Article IX, Section 7.

¹⁵ *Hurd's Revised Statutes*, Ch. 102, Secs. 11-15. See *Board of Trade v. Cowen*, 252 Ill. 554 (1911).

manner, if a satisfactory estimate can be made at the beginning of the biennial period of the probable amount of the funds to come into the working fund, this amount can then be appropriated as a specific amount, and such an appropriation would comply with the provisions of the constitution.¹⁶

In connection with the subject here under discussion attention should also be called to the fact that the separate section on the Illinois and Michigan Canal makes it necessary that the earnings of the canal be kept or accounted for, separately from other state revenues.¹⁷

Detailed Provisions regarding methods of Appropriations. Article IV, Section 16 of the constitution provides that bills making appropriations for the pay of members and officers of the general assembly and for the salaries of the officers of the government shall contain no provision on any other subject. Apparently the intention of this provision was to separate substantive legislation from appropriations, but it will readily be seen from reading the clause that it does not accomplish this purpose. Provided it does not appropriate for salaries of the officers of the government, a legislative act may in this state constitutionally carry an appropriation to cover the matters dealt with in the substance of the act. Examples of this will be found in the laws of 1919, pages 60, 83, 89, 129, 134, 211 and 215.

The constitutional provision does, however, make it necessary that officers shall be appropriated for in a separate bill from that containing appropriations for the other expenses of the state government. Each office has some persons in it who are technically officers, and they must be appropriated for in one bill. Each such office necessarily has other expenses which must be appropriated for in another bill. That is, the constitutional provision in Illinois makes it necessary that the appropriations for each office be put in at least two separate bills; so that in order to know what has been appropriated for that office, it is necessary to look in two distinct places. This requirement of appropriations in two separate places for each state office or activity also adds very seriously to the difficulties of accounting with respect to the appropriations made.

The provision with respect to separate appropriations for officers of the state government should be read with Article V, Section 24 of the constitution, which defines an office as "a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed." This constitutional provision has been subject to judicial construction in a number of cases, but is hardly clearer for such judicial construction.¹⁸

The distinction between an office and an employment under the constitution is a purely technical one; and the general assembly at practically every session has to determine, at the risk of its action being

¹⁶ Laws (1919) 947, 189.

¹⁸ *People v. Joyce*, 246 Ill. 124; *Fergus v. Russel*, 270 Ill. 304.

¹⁸ *People v. Joyce*, 246 Ill. 124; *Fergus v. Russel*, 270 Ill. 304.

unconstitutional, whether a position to be appropriated for is an office or an employment. The Fergus cases have done something to clarify this situation; but the case of *Fergus v. Russel*¹⁹ has not made the matter clear, even when this is supplemented by the decree of the lower court commented upon in the report of the attorney general for 1916.

Not only does the present constitutional provision make trouble, but it separates the appropriations for the same office into two artificial divisions and it does not accomplish the purpose apparently aimed at. This purpose seems to be the prevention of riders to appropriation bills and the avoidance of appropriations in legislation which is not dealing primarily with appropriation matters.

Article IV, Section 18 of the constitution requires the general assembly to make "all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session." This provision was inserted upon the assumption that the regular legislative sessions would end within three months, and that the end of the first fiscal quarter after the adjournment of the general assembly would normally be July 1.²⁰ However, the practice for a number of years has been for the general assembly to remain in session until close to the first of July, so that the expiration of the first fiscal quarter after such adjournment becomes September 30 of the fiscal period. The constitution in Article IV, Section 13, prescribes that no act of the general assembly shall take effect until the first day of July next after its passage unless in case of emergency the general assembly by a vote of two-thirds of the members elected to each house otherwise direct. It is substantially necessary, therefore, that the appropriation period begin with July 1, and if under the constitution it is mandatory to make all appropriations necessary for the expenses of the government until the end of the first fiscal quarter after the adjournment of the next regular session, this makes September 30 the necessary period for termination of such appropriations. To take a specific instance, the general assembly in its 1919 session is making appropriations effective July 1, 1919. Under the constitution, the appropriations made in 1917 and effective July 1, 1917 continue until September 30, 1919, so that there is an overlapping three months' period within which expenditures may have been paid from either of two appropriations. If during the three months' period, new expenditures may be incurred by an office and charged to either of two appropriations, it becomes impossible to obtain a financial statement that will mean very much for either two-year period. It is clear, therefore, that legislative appropriations should, if possible, be made available for expenditures for a twenty-four months' period, without the overlapping of one appropriation with that for the succeeding biennium.

It seems constitutional to make all appropriations expressly for twenty-four months' period (as has been the case for a great many years with salary appropriations), with a proviso that appropriations

¹⁹ 270 Ill. 304.

²⁰ Debates, Constitutional Convention of 1870, I, 540.

for the biennium shall be available until September 30 for expenditures incurred prior to July 1 of that year. The overlapping quarter in each biennial appropriation period then becomes merely a period within which payments incurred during the twenty-four months may be paid from appropriations available for such twenty-four months. A step towards the accomplishment of this result was taken by an act of 1919.²¹

As has been suggested above, the purpose contemplated by the constitution was apparently an appropriation period of two years, and there is nothing in the constitution which makes it necessary that the general assembly base its appropriations upon a two year and three months period. The constitution in Article IV, Section 18, provides that the aggregate amount of appropriations made by each general assembly shall not be increased without a vote of two-thirds of the members elected to each house. Appropriations in addition to those made at the regular appropriation times are also as a rule needed for use before the first of July next after their passage, and as emergency laws would require a vote of two-thirds of all the members elected to each house.²² The supreme court in the case of *Fergus v. Brady*²³ says that "the power of the general assembly to make appropriations for any purpose is not exhausted by one appropriation but additional appropriations may be made before an indebtedness is incurred, as occasion may require"; and this statement is clearly borne out by the language of the constitution.

A number of detailed limitations upon appropriations may be called attention to, without the need of very extended comment. Article IV, Section 16, of the constitution provides that "the general assembly shall make no appropriation of money out of the treasury in any private law." In view of the debates in the constitutional convention of 1870 and of the decision in the case of *Fergus v. Russel*, 277 Ill. 20, it is difficult to know just what if any meaning this clause has. In the decision of the court the discussion of this clause is necessarily tied up with that of Article IV, Section 26, prohibiting suits against the state; and the prohibition of appropriations in private laws, if it is to mean anything, must be coupled with some plan by which claims against the state may be paid without special legislation for such payment.

The constitutional provisions against the state's relinquishing debts (Article IV, Section 23) or assuming debts (Article IV, Section 20) are also of importance in connection with the constitutional policy of appropriations; as is also the provision of Article IV, Section 19, against the authorizing of extra compensation or the payment of any claim incurred without express authority of law. With respect to Article IV, section 20 attention should be called to an Attorney General's opinion that: "Provided the appropriation be for a public purpose, a private corporation, association or individual may be the recipient of funds arising from taxation to be disbursed as directed by the

²¹ Laws, 1919, page 951, Sec. 26.

²² Article IV, Section 13.

²³ 277 Ill. page 280.

legislature and such an appropriation, authorizing the receipt and disbursement of the public funds, does not offend against a constitutional provision prohibiting the loaning of the credit of the state, or appropriating the money of the state, in aid of a private corporation, association or individual.”²⁴ The provisions of Article IV, Section 18 and Article IV, Section 33 regarding popular votes for the incurring of indebtedness and for the construction of the state house should also be noted.

Incurring obligations without Express Authority of Law.

Section 17 of Article IV of the constitution provides that no money shall be drawn from the treasury except in pursuance of an appropriation made by law, and section 19 of the same article provides that the general assembly shall not authorize payments of claims under any agreement or contract made without express authority of law. It would have been possible to construe these provisions as prohibiting the incurring of any indebtedness not covered by appropriations already available, but the supreme court was unwilling to go this far. The supreme court has taken the view that some indebtedness may be incurred by the state although no appropriation is available at the time the indebtedness is incurred. Under the decision of the supreme court no line can be drawn which will indicate when an expense may be incurred in advance of an appropriation for the payment of such expense.

In the case of *Fergus v. Brady*²⁵ the court said that “if there is some particular and specific thing which an officer, board or agency of the state is required to do, the performance of the duty is expressly authorized by law. That authority is expressed which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly, with well defined limits, and the only exception under which a contract exceeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law. An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois penitentiary which has been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, feed, clothe and guard prisoners convicted of crime and placed in their care, involving the expenditure of money, which may vary on account of the cost of clothing, food and labor beyond the control of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates. To extend the meaning of the constitutional requirement that there shall be express

²⁴ Report of the Attorney General, 1910, p. 114. See also *ibid.* 756, and *Boehm v. Hertz*, 182 Ill. 154 (1899).

²⁵ 277 Ill. 272 (1917), page 279.

authority of law for the creation of a debt or the making of an agreement or contract in excess of an appropriation for the purpose beyond the meaning we have given to it would destroy and nullify the provisions of the constitution."

This decision construed literally would permit any office to incur indebtedness in the absence of appropriation, leaving the general assembly to meet such indebtedness by a subsequent appropriation; for substantially every office has specific authority to perform certain duties. However, the court seems to have intended to limit the incurring of indebtedness in advance of appropriations to cases where there is not only express authority of law but also some actual emergency which makes it essential that state institutions or other functions should be continued in a manner impossible under appropriations then available. The General Assembly cannot well refuse to appropriate to pay obligations already incurred, and the incurring of obligations in advance of appropriations should be confined to the narrowest possible limits.

Summary on Conditions in Illinois. The above discussion indicates that there are numerous provisions in the constitution of Illinois bearing upon the financial or budget policy of the state. These provisions however were not planned as a whole but were intended to meet particular difficulties which had presented themselves before 1870, and their relationship to each other is largely a result of accident. In connection with these provisions certain difficulties have presented themselves:

(a) That as to the provision regarding the appropriation to specific objects in distinct items. This provision was introduced by amendment in 1884.

(b) That as to the separate appropriation bill for the salaries of officers.

(c) That as to the appropriation period.

(d) That as to the governor's share in legislation which, so far as the veto power is concerned, has become a purely negative one, through the fact that appropriation acts are passed at the end of the legislative sessions.

(e) The relationship between revenue and appropriations, which is in part a constitutional difficulty and in part one resulting from the present statutory system with respect to revenue.

The present system in this state may be summed up substantially as follows:

(1) There are effective budget estimates under legislation of 1917, under the control of the governor; and the participation of the governor in the appropriation machinery may, under the present constitution, be worked out as in 1919 through the governor's appearing before the two houses, without the necessity of a constitutional provision for that purpose. Under the present plan the governor assumes an

affirmative share in budget policy, although in the main only for the offices under his direct supervision.

(2) Each house has a single committee for the consideration of appropriations so that the consideration of appropriation matters is not scattered among a number of bodies, although revenue matters are not concentrated into the same committee as are appropriations.

(3) A uniform standardization of items has been introduced into all of the more important appropriation bills. There were sixty-eight appropriation bills in 1917 and seventy-seven in 1919. This number is entirely too large, although if a uniform plan is followed there is no necessity that the budget should be considered in one bill, and there is in fact a disadvantage of consideration in one bill because of the fact that legislative bodies are now organized more effectively for deliberation upon smaller units of business than would be presented by a single appropriation bill. However, there should be a material reduction in the number of appropriation bills.

(4) With the uniform standardization of items a large task still presents itself of obtaining a standardization of salaries, so that the appropriation acts will carry substantially the same salaries for the same types of duties in all offices of the state, and so also that a salary control may be established without placing all salary details in the appropriation acts. It has already been suggested that lump sum appropriations are now made for salaries in the charitable and penal institutions, and appropriations are made in this manner for these institutions, largely because a standardization of salaries for them has been worked out by the department of public welfare.

(5) All appropriations are limited to a definite period and none are renewable without express action making new appropriations. The appropriation period makes trouble so far as there is an overlapping three months, and this situation should be remedied by constitutional change, although it can probably be met in part by legislation.

(6) As to debt financing, attention should be called to the fact that the \$60,000,000 bond issue for good roads was authorized under Article IV, Section 18, more easily than the \$20,000,000 for a deep waterway under the separate canal section of the constitution.

Conditions in other States. The movement for a more effective state budget system has been actively under way during the past ten years. At the present time there are thirty-nine states which have provided either by constitutional amendment or by statute for permanent budgetary procedure of one type or another.

Of these states twenty-two have adopted an executive budget, that is, have placed the budget control primarily in the hands of the

governor. A list of these states is given in a note.²⁶ Nebraska and several of the other states with an executive budget provided by statute have modeled their plans largely upon those of Illinois.

Of the other states which have budget laws two confide the preparation of the budget to legislative committees; six have budget boards or committees composed of both executive and legislative officers; and nine place the preparation of the budget in the hands of an administrative board. Six of the states having an administrative board provide that the governor shall be a member of the budget board, and in three states the governor controls the budget board by appointment. The states having a budget organization through administrative boards are indicated in a note.²⁷

In the thirty-nine states having provision for a budget, the details of organization and of duties vary greatly, and a discussion of such details is unnecessary here.²⁸

Of the states which have adopted some budget plan three have adopted constitutional amendments with respect to this matter.²⁹

The proposed New York constitution of 1915 contained a budget plan somewhat similar to that later adopted in Maryland, but this constitution was rejected by popular vote. A defective amendment for a state budget plan was rejected by the voters of California in 1918. A proposed budget amendment similar to that of Maryland was proposed by the Indiana legislature of 1919, but has to be adopted by the legislature of that state in 1921 before being submitted to a popular vote.

The Maryland budget amendment is the first detailed constitutional provision to be adopted in this country. This amendment provides that the governor shall submit to the general assembly two budgets, one for each of the ensuing fiscal years, and that each budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year to which it relates. Each budget is required to be divided into two parts, one of governmental appropriations for the ordinary conduct of the state government, and the other including all other estimates of appropriations. The general assembly is permitted to amend the bill by increasing or decreasing the items relating to the general assembly and by increasing the items relating to the judiciary, but otherwise may not alter the bill except to strike out or reduce items. The bill when passed becomes law immediately without further action by the governor. Supplementary appropriation bills may be considered in either house after the budget bill has

²⁶ Arizona, 1919; Colorado, 1919; Idaho, 1919; Illinois, 1917; Iowa, 1915; Kansas, 1917; Maryland, 1916; Massachusetts, 1918; Minnesota, 1915; Mississippi, 1918; Nebraska, 1919; Nevada, 1919; New Hampshire, 1919; New Jersey, 1916; New Mexico, 1919; Ohio, 1913; Oklahoma, 1919; Oregon, 1913; South Carolina, 1919; Utah, 1917; Virginia, 1918; Wyoming, 1919. In New Hampshire, Oregon and South Carolina the budget estimates are not prepared directly under the supervision of the governor.

²⁷ Alabama, 1914; California, 1911; Connecticut, 1915, amended 1919; Kentucky, 1918; Louisiana, 1916; Montana, 1919; Tennessee, 1917; Washington, 1915, and West Virginia, 1918.

²⁸ For a detailed analysis of the state executive budget laws, see Buck, A. E., *The Present Status of the Executive Budget in the state governments*, National Municipal Review, Vol. VIII, p. 422. (August, 1919).

²⁹ Maryland, 1916; Massachusetts, 1918; West Virginia, 1918.

been finally acted upon, but every supplemental appropriation must be embodied in a separate bill limited to some single work, object or purpose, and each supplementary appropriation bill must provide the revenue necessary to pay the appropriation so made. Each supplementary appropriation bill is subject to the veto power both as a whole and as to items. In connection with the budget bill the governor and any other executive officers designated by the governor may appear before either house and they may be required by either house to appear.

The Indiana budget amendment proposed in 1919 adopts the same plan as the Maryland amendment. The proposed budget provision in the New York rejected constitution of 1915 was similar to the Maryland amendment except that there was no requirement that a supplementary appropriation bill provide also the revenue to meet the appropriation therein made.

The West Virginia amendment of 1918 is similar to the Maryland amendment, except in the very important respect that in West Virginia the estimates are submitted by a board of public works consisting of the governor, secretary of state, auditor, treasurer, attorney general, superintendent of free schools and commissioner of agriculture. That is, instead of having a single executive officer responsible for submitting the budget in West Virginia, this responsibility is placed in a board of the more important state executive officers. Such a plan is much more likely to lead to trading among the various officers than that adopted in Maryland, and actually reduces the governor's power over appropriations.

The proposed amendment rejected in California in 1918 actually reduced the governor's power over the budget as contrasted with the statutory provisions now existing in that state. There was to be a budget board consisting of three members of the state board of control and the state controller, with the lieutenant governor as ex-officio member. Budget estimates are now prepared by the state board of control, all of whose members are appointed by the governor. The proposed amendment provided that the chairman or a designated member of the budget board should sit with each house of the legislature when the budget was under consideration.

The Massachusetts budget amendment adopted in 1918 places upon the governor the full responsibility for the preparation of the budget estimates to be submitted to the general court, but follows a somewhat different plan from that prescribed by the Maryland amendment. The Massachusetts amendment provides that the governor shall recommend a budget, and that all appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill to be called the general appropriation bill. The general court is authorized to increase, decrease, add or omit items in the budget. After the action upon the governor's budget, special appropriation bills may be enacted, each bill to provide the specific means for defraying the appropriations therein contained. The governor is authorized to disapprove or reduce items or parts of items in any bill appropriating money. That is, with respect to the governor's

budget, the general court may increase or add items, but the governor is authorized to disapprove or reduce items or parts of items. The Massachusetts plan seeks to accomplish the same purpose as the Maryland plan, but gives to the legislature a somewhat greater degree of initiative. In Maryland the legislature may not increase or add to the governor's budget, but the budget becomes effective upon legislative action without approval by the governor. In Massachusetts the general court may increase items or add items, but the governor is authorized to disapprove or reduce items or parts of items either in the general budget bill or in any other appropriation bills. The Massachusetts budget amendment is much shorter and less detailed than that of Maryland, and thus permits changes in methods of procedure.

Conclusions. As has already been suggested, thirty-nine states now have some provision for a budget and in only three of these are the budget arrangements prescribed in the constitution. The movement for a state budget is relatively new, and this suggests caution about placing the details of budget procedure in a constitution. The state of Illinois, with budget provisions in a statute, has operated satisfactorily in one session of the general assembly, although there are certain constitutional difficulties with respect to the satisfactory operation of the budget system in this state. One point to which specific attention should be called is that no machinery, either statutory or constitutional, will produce a single executive responsibility for the budget, so long as there is not a single executive responsibility for the conduct of the affairs of the state government. It will be practically impossible to have a number of state executive officers independent of the governor, and at the same time commit to the governor a power to determine the maximum limits of appropriations for such state officers. The Maryland and Massachusetts plans vest in the governor the preparation of estimates for the whole of the state organization, but these plans will almost necessarily lead to a situation in which the other elective state officers determine their own appropriations. That is, the plans in Maryland and Massachusetts are very likely to work in much the same manner as the West Virginia plan, which vests the preparation of budget estimates in a board composed of all the elective state officers. A single executive responsibility for the budget system and for the maximum cost of conducting the state government depends necessarily upon a responsibility in the head of the state executive for the actual conduct of all of the state executive affairs.

The determination of the financial policy of the state is necessarily a joint task of the legislature and of the head of the executive department. If this task is to be properly performed, the legislative and the executive departments cannot act in complete independence of each other. The standard toward which state developments in this country has tended is that of placing responsibility upon the exe-

cutive for the maximum amount to be appropriated for the conduct of the state government, with a legislative check upon the executive to see that appropriations are kept within a reasonable maximum, and that the appropriations once made are properly expended. For the task of the legislature, a detailed auditing machinery within the legislative department is not needed, but accounts of all expenditures should be kept in such a manner that the general assembly when it convenes may receive a relatively brief and clear report of what has actually been done. The legislative committees may then investigate any points which, upon the basis of such a report, seem to require attention.

The budget difficulties in Illinois are now largely due to details in the constitution of 1870. The vesting in the governor of a purely negative share in the financial policy of the state through the veto, has not worked satisfactorily, and a long step has been taken toward vesting in the governor a positive responsibility in connection with the cost of the state government. Whether a greater share of responsibility shall be vested in the governor with respect to financial policy depends primarily upon the form of executive organization to be adopted. At present the governor controls the estimate of expenses and the actual expenditure of funds for the greater part of the state administration; and the general assembly through its appropriation committees are able for that part of the administration to obtain detailed statements much more readily than for the portion of the administration not under the governor's control. The question as to whether there shall be a greater or a less degree of executive control by the governor is one for the constitutional convention. Aside from this the main problem is that of removing some limitations which are now in the constitution with respect to financial policy.

IX. CONSTITUTIONAL RESTRICTIONS ON PUBLIC DEBT

State Debt in Illinois. The first constitution of Illinois, like other constitutions of the time, contained no restrictions on the borrowing power of the General Assembly. During the early years of state government financial transactions were on a small scale; and while at times there were small deficits, and a loan of \$100,000 was made to cover losses connected with the first state bank, no serious difficulties developed. But after 1835, the state entered into extensive banking, canal and internal improvement schemes, for which large loans were made; and following the financial crisis there came a break down in state credit in 1842. The total state debt at that time has been estimated at a minimum of \$15,000,000 and a maximum of \$20,000,000, or from 20 to nearly 30 per cent of the assessed valuation of taxable property (\$72,000,000). Some efforts were made to meet this situation by the General Assembly; but the problem remained to be faced by the constitutional convention of 1847.

In the constitution of 1848, provision was made for an annual two mill tax for the state debt; and a series of restrictions were imposed on incurring further debt. To meet casual deficits or failures in revenue, \$50,000 might be borrowed; but

"No other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war (for payment of which the faith of the state shall be pledged) shall be contracted, unless the law authorizing the same shall, at a general election, have received a majority of all the votes cast for members of the General Assembly at such election."

The General Assembly was also required to provide for publishing the law, and to make provision for the payment of interest by a tax or from other sources of revenue; and the tax law must be submitted to the people with the law authorizing the debt.

The loan of state credit in aid of private enterprises was also prohibited.

Under these provisions, the state debt was largely paid off within twenty years, and substantially no additional state debt was incurred. By 1870, the state debt was only \$4,890,937, or barely one per cent of the assessed valuation of property. The debt was further reduced to \$1,446,666 in 1880—most of this consisting of amounts due to educational trust funds.

In the constitution of 1870, the provisions in the constitution of 1848 as to state debt were repeated (as section 18 of Article IV), with

an increase in the debt allowed to meet casual deficits from \$50,000 to \$250,000. Attention should also be called to the fact that Article IV, Section 18 lays down a rule that appropriations shall not exceed the amount of revenue authorized to be raised. Comment upon the operation of this provision will be found on page 276 of this pamphlet.

A constitutional amendment to separate section 3, adopted in 1908, authorized the issue of state bonds, not to exceed \$20,000,000 for the construction of a deep waterway from Lockport to Utica.

In 1918, a state bond issue of \$60,000,000 was authorized by popular vote, for the construction of a system of state roads, interest and principal to be paid from license fees on motor vehicles.

In 1916, the gross state debt of Illinois was \$7,220,869, a large part of which was outstanding warrants, representing a temporary deficit, and covered by taxes for that year. The net debt was \$2,066,920. In 1918, the gross state debt was \$3,996,852, of which \$1,939,932 was for outstanding warrants and other current obligations. The net debt was \$2,056,920, to educational trust funds. The bonds recently authorized have not yet been issued.

Municipal Debts in Illinois. While the state debt had become unimportant by 1870, municipal debts had increased rapidly, especially during the preceding decade, by grants of aid for the construction of railroads. In 1870, the aggregate of municipal debts in Illinois amounted to \$37,300,933, which was somewhat more than 7½ per cent of the assessed valuation of property in the state, though less than 2 per cent of the estimated true value of property. In several counties the local debts amounted to more than 10 per cent of the assessed valuation of property; and in two counties (Cook and Macoupin) to more than 20 per cent.

After extended discussion in the convention, the constitution of 1870 placed a series of restrictions on municipal debt, in Section 12 of Article IX and another section separately submitted and adopted. These provide as follows:

“Section 12. No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before, or at any time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district, or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor.”

The separate section prohibited municipalities from subscribing to stock or loaning their credit to any railroad or private corporation, unless authorized under existing laws by a vote of the people of such municipalities prior to the adoption of this article.

A constitutional amendment, adopted in 1890, adding a new section (13) to Article IX, authorized the City of Chicago to issue not to exceed \$5,000,000 in bonds on account of the World's Columbian Exposition, provided the amendment received a majority of the votes cast in Chicago.

The constitutional amendment authorizing special legislation for Chicago (section 34 of Article IV), adopted in 1904, authorized a total debt for the city (including the debt of all municipal corporations within the city and the city's share of the county and sanitary district debt) of not to exceed five per cent of the full value of taxable property; and also required a referendum on all new bonded indebtedness except for refunding purposes.

The restrictions on municipal debt, in the constitution of 1870, checked the increase of municipal debt for a time. In 1880 the aggregate municipal debt was about \$45,000,000, an increase of something more than 20 per cent, and a reduction in the percentage of debt to both assessed valuation and the estimated true value of property. By 1890, the aggregate municipal debt had decreased to \$40,000,000.

But since 1890, municipal debts have increased steadily, to \$78,500,000 in 1902 and \$137,000,000 in 1912. This increase was at about the same rate as the increase in the estimated true value of property. The increase since 1912 has probably been at a relatively larger rate; but no provision is made in Illinois for official data relating to municipal debts, and complete data are not available since the last census report.

This recent increase of municipal debts has been aided by legislation modifying the effect of the constitutional provisions. The basis of assessed valuation, which was fixed at one-fifth of true value in 1898, was raised to one-third of true value in 1909, and has again been raised to one-half of true value in 1919. The object of these changes has been to enlarge the borrowing powers of municipalities; and while altering the effect of the constitutional provisions, cannot be said to conflict with their terms.

Further enlargement of municipal debt has also been permitted by legislation authorizing the creation of overlapping municipal corporations covering the same territory, each authorized to incur debt by borrowing. The existence of such overlapping districts is recognized in the constitutional provisions, and the limits established apparently were intended to apply to each municipal corporation; but the formation of new types of such districts, such as park and sanitary districts, has substantially enlarged the total amount of debt which may be incurred for the same territory.

Judicial Decisions. Some judicial decisions interpreting the

constitutional provisions relating to municipal debts, and establishing rules for their application, may be noted.

The limitation on municipal debt in Section 12 of Article IX, has been held to apply to each municipal corporation taken singly, and is not affected by the pre-existing debt of other municipal corporations covering the same or a part of the same territory.¹

But the establishment by a school district of a high school under the control of a separate board of education does not authorize the school district to incur indebtedness in excess of the constitutional limit of five per cent.²

The limitation on municipal debt applies to a contract for a term of years relating to ordinary current expenses payable out of the current revenue.³

A city may acquire a system of waterworks by pledging the income until it shall pay for the system, and no indebtedness is created. But an obligation to pay with the income of property already owned by the city is not different from an obligation to pay with any other funds, so far as the question whether the transaction amounts to a debt is concerned.⁴

Street railway certificates issued by a city and secured by mortgage on the street railway property, together with the right to operate such railways for a period of 20 years after foreclosure, are held to create an indebtedness against the city; and the issue of such certificates is illegal if, added to the existing indebtedness, the total will exceed the constitutional limit.⁵

Tax anticipation warrants are not contracts, and a city is not indebted on account of having issued them. Such warrants, payable out of a tax already levied, do not add to the indebtedness of a city which has reached the constitutional limit, and they create no obligation on the part of the city.⁶

Drainage assessments are not debts within the meaning of the constitutional limitation. They are in the nature of an exchange for benefits received by the enhanced value of the property derived from the improvement, to pay for which the assessment is made. The limitation of the constitution is against becoming indebted for corporate purposes and has no reference whatever to assessments for local improvements.⁷

The decision in the *Lobdell* case, relating to street railway certificates, is of special importance, in limiting the borrowing powers of cities for debts secured by public utility property. Such debts, outside of the ordinary limits, are now definitely authorized by the constitutions of Michigan and Ohio; and somewhat differ-

¹ *Wilson v. Board of Trustees* 113 Ill. 443 (1890).

² *Russell v. High School Board*, 212 Ill. 327 (1904).

³ *Prince v. City of Quincy*, 128 Ill. 443 (1889).

⁴ *City of Joliet v. Alexander*, 194 Ill. 457 (1902); *East Moline v. Pope*, 224 Ill. 386 (1906); *Schnell v. Rock Island*, 232 Ill. 89, 99 (1908).

⁵ *Lobdell v. Chicago*, 227 Ill. 218 (1907).

⁶ *Booth v. Opel* 244 Ill. 317, 327 (1910).

⁷ *People v. Honeywell*, 258 Ill. 319 (1913).

ent provisions for the same purpose have been adopted in New York and Pennsylvania. A number of other states authorize additional loans for public utilities above the ordinary debt limit.

State and Municipal Debts in Illinois.^a

Year.	State Debt.	Total Municipal Debt.	Assessed Valuation.	Estimated True Value of Taxable Property.
1842.....	\$20,486,097	.....	\$ 72,605,424	.....
1852.....	17,500,000	.....	149,294,805	.....
1860.....	10,277,160	.....	389,207,372	\$ 871,860,282
1870.....	4,890,937	\$ 37,300,933	480,664,058	2,121,680,579
1880.....	1,446,466	44,942,422	786,616,394	3,092,000,000
1890.....	1,811,396	40,656,742	809,682,926	4,830,750,000
1902.....	2,155,122	78,559,937	1,030,292,435	7,500,000,000
1912.....	2,272,620	137,207,747	2,343,673,232	14,596,467,087
1916.....	2,066,920	.....	2,499,311,888	.....
1918.....	2,056,920	.....	2,626,084,386	.....

^a United States Census reports 1850, 1870, 1902, 1912; Halg: History of the General Property Tax in Illinois; Census Reports on Financial Statistics of States.

Local Debts in Certain Illinois Counties.^a

County and Year.	Total local debt. All local governments.	Assessed Valuation.	Per Cent Debt to Valuation.	Per Capita Debt.
<i>Adams County:</i>				
1870.....	\$ 1,648,820	\$ 13,198,067	13	\$29.29
1880.....	2,269,114	17,189,806	13	38.37
1890.....	1,725,408	13,330,493	13	27.88
1902.....	1,058,403	11,740,458	9	15.54
1912.....	469,265	23,509,170	2	7.27
<i>Cook County:</i>				
1870.....	17,769,000	85,684,584	21	50.77
1880.....	19,880,913	148,982,393	13	32.72
1890.....	19,387,637	240,230,792	8	16.27
1902.....	57,291,322	433,489,922	13	29.11
1912.....	99,193,693	1,007,504,357	9	38.31
<i>Macoupin County:</i>				
1870.....	1,508,000	6,863,906	22	46.00
1880.....	1,119,460	11,010,194	10	31.82
1890.....	1,238,230	9,703,751	12	30.66
1902.....	532,159	7,297,426	7	12.48
1912.....	180,560	15,092,170	1	3.38
<i>Peoria County:</i>				
1870.....	1,615,000	9,475,030	17	34.00
1880.....	1,281,821	14,105,512	9	23.16
1890.....	1,308,835	15,102,659	8	18.60
1902.....	1,059,059	18,351,516	6	11.48
1912.....	1,901,846	36,963,889	5	18.28
<i>St Clair County:</i>				
1870.....	253,000	9,140,021	3	5.00
1880.....	731,194	15,466,367	5	11.83
1890.....	960,600	15,430,176	6	14.43
1902.....	1,245,738	16,727,457	8	13.73
1912.....	4,414,380	34,154,576	13	33.79
<i>Sangamon County:</i>				
1870.....	1,300,672	12,995,035	10	28.05
1880.....	1,110,959	17,318,488	6	21.00
1890.....	1,234,427	15,351,434	8	20.17
1902.....	1,405,295	17,284,884	8	19.07
1912.....	1,891,543	41,014,292	4	19.43

^a United States Census Reports 1850, 1870, 1902, 1912.

Municipal Debts of Illinois Cities, 1918.^a

City.	Total debt.	City Corpora- tion.	School District.	Other local govern- ments. ^b
Chicago.....	\$127,293,278	\$80,485,943	\$2,986,055	\$43,821,980
East St. Louis.....	2,859,062	1,928,686	540,080	390,296
Peoria.....	2,036,586	1,406,540	558,000	72,037
Springfield.....	2,045,598	1,325,783	594,000	125,815
Rockford.....	2,308,629	1,679,581	435,423	193,625
Decatur.....	1,424,664	855,172	569,492	.....
Joliet.....	1,206,903	1,124,909	81,994	.....
Quincy.....	409,643	239,643	170,000	.....
Aurora.....	1,142,155	822,155	320,000	.....
Danville.....	781,836	619,936	161,900	.....

^a U. S. Census, Financial Statistics of Cities, 1918.^b Includes county (for Chicago only), sanitary and park districts.

Development of Constitutional Restrictions. The early state constitutions contained no restrictions on public debt. Some of the states had incurred relatively large debts during the Revolution; but these were assumed by the national government. Until after the War of 1812-15, state activities were unimportant and there was little borrowing or debt. But beginning with New York in 1817, many of the states entered on an active period of internal improvements, for which large debts were incurred. In New York, the state debt was increased \$7,737,770 from 1817 to 1825, and in 1846 the total debt was about \$26,000,000. In 1830, the combined debt of all the states was not more than \$13,000,000. By 1839 it exceeded \$183,000,000.

Following the financial crisis of 1837 and the failure of many undertakings, which had been expected to be self-sustaining, it became necessary to levy heavy taxes to pay interest and principal on these debts. This led to a sharp reversal of public opinion, and the rapid adoption of limitations on state debt by the amendment and revision of state constitutions.

The first restriction adopted appears to have been in the Florida constitution of 1838, which provided that: "The General Assembly shall not pledge the faith and credit of the state to raise funds in aid of any corporation whatsoever." The Rhode Island constitution of 1842 contained more restrictive provisions, as follows:

"The general assembly shall have no power hereafter, without the express consent of the people, to incur State debts to an amount exceeding fifty thousand dollars, except in time of war, or in case of insurrection or invasion; nor shall they in any case, without such consent, pledge the faith of the state for the payment of the obligations of others. This section shall not be construed to refer to any money that may be deposited with the State by the Government of the United States."

Michigan in 1843 adopted an amendment requiring a referendum on laws creating state debt, except for ordinary expenses or in case of insurrection, invasion or war. The New Jersey constitution of 1844 prohibited loaning the credit of the state, and contained a more specific provision, requiring for debts over \$100,000, (except in case of war, insurrection or invasion) a referendum on the law, which "shall provide the ways and means, exclusive of loans," to pay the interest and (within 35 years) the principal.

Restrictions on state debt were adopted in Louisiana and Texas in 1845; in New York (where the subject had been actively discussed for several years) and Iowa in 1846; in Illinois, Maine and Wisconsin in 1848; in California in 1849; in Kentucky in 1850; in Maryland, Indiana and Ohio in 1851; in Kansas in 1855; and in Pennsylvania, Minnesota and Oregon in 1857. Since then such restrictions have been adopted in most of the other states, and have also been incorporated in the constitutions of new states as they were formed. At the present time limitations on borrowing power are in the constitutions of all the states except three—Connecticut, New Hampshire and Vermont.

Constitutional restrictions on local public debt were imposed for the most part later than restrictions on state debt. This was due in part to the fact that such debts did not become large enough to attract attention until later than the state debt period. Moreover, under the general doctrine of legislative control and strict construction of municipal powers, local authorities had only such powers of borrowing and taxation as were granted by the legislature. Nevertheless, as early as 1846, the New York constitution specifically provided that it was the duty of the legislature to restrict the powers of municipal corporations to tax, borrow money, contract debts or loan their credit. Similar provisions were placed in the Wisconsin constitution of 1848, in that of Michigan in 1850, in Ohio in 1851, and later in other states.

About the same time more definite prohibitions against loaning the credit of municipalities to private enterprises began to appear. The Indiana constitution of 1851 prohibited counties from loaning their credit or subscribing to the stock of private corporations; and the Ohio constitution of the same year imposed a similar prohibition on counties, cities, towns and townships. Similar provisions were adopted by Oregon and Pennsylvania in 1857; and partial limitations in several other states before 1870.⁸ In 1857, Iowa imposed a five per cent debt limit on municipalities.

A more general movement for constitutional restrictions on municipal debt began about 1870. This was a result of the rapid increase in such debts in the decade following the civil war. These debts were incurred to a large extent for subsidizing railroads; and municipal loans for this purpose became more important partly because of the restrictions on state debts for such purposes. By 1870, the aggregate local public debts in the United States amounted to \$515,810,060,—about 50 per cent more than the state debts at that time. From 1866

⁸ Nevada (1864), Missouri (1865), Maryland (1867), Mississippi and North Carolina (1868), Secrist: *Constitutional Restrictions on Public Indebtedness*, pp. 59, 68.

to 1876 the aggregate debt of 130 cities in the United States increased from \$221,000,000 to \$604,000,000.⁹

By 1880, the constitutions of eighteen states contained prohibitions against municipalities loaning their credit or subscribing to the stock of private corporations. Other states adopted such restrictions later; and there are now thirty states which prohibit such subsidies to all private corporations; several other states have prohibitions against such aid to some classes of corporations, as railroads; and in a few states municipalities can loan their credit only if approved by popular vote.

At the same time further restrictions were imposed on the total amount of municipal debt, the duration of loans, and methods of payment. Illinois imposed a limit of five per cent of the assessed valuation in 1870; West Virginia in 1872 and Wisconsin in 1873 established the same limit. A seven per cent limit was adopted in Pennsylvania in 1873 and in Georgia in 1877. Indiana imposed a two per cent limit in 1881, and New York a ten per cent limit in 1884. Twenty-eight states now place limitations on the amount of local debt; and a number of states require a referendum on the issue of bonds beyond the normal limit, or impose other restrictions.

In recent years, however, notably since 1900, there has been a counter tendency to relax the restrictions on both state and municipal debts. This has been done by authorizing loans for certain purposes, such as roads and public utilities; and debts of considerable proportions have also been incurred under the referendum provisions in a number of states.

The effects of the constitutional provisions relating to public debt are indicated in the table below. State debts, which had increased very rapidly in the decade after 1830, showed almost no further increase in the next decade to 1850. During the civil war there was another increase of state debts, mainly in the southern states, though there were still debts of considerable amounts in New York, Pennsylvania and Massachusetts. After 1870, state debts decreased from \$352,000,000 to \$211,000,000 in 1890. During the next 12 years there was a slight increase; and since then the result of the new tendencies are reflected in a decided increase to \$345,000,000 in 1912, and \$502,492,713 in 1918.

Municipal debts have continued to increase rapidly. In the decade 1880 to 1890, the increase was relatively slight, and there was a decrease in the per capita local debt. Since 1890, the increase of municipal debt has been rapid and continuous,—about eighty per cent in the twelve years from 1890 to 1902, and more than doubling in the next decade.

⁹ Secrist. *Constitutional Restrictions*, p. 56.

State and Local Debts.^a

	State Debts.	Per Capita.	Local Debts.	Per Capita.
1830.....	\$ 13,000,000	\$ 1.30	.....	.....
1839.....	183,000,000	13.00	.....	.....
1852.....	191,508,922	.....	.....	.....
1870.....	352,866,698	10.50	\$ 515,810,060	\$15.35
1880.....	274,745,772	5.48	848,532,875	16.92
1890.....	211,210,487	3.37	925,989,603	14.79
1902.....	234,908,873	2.99	1,630,069,610	20.74
1912.....	345,942,305	3.64	3,475,954,353	36.59
1916.....	459,661,269	4.59	.....	.....
1918.....	502,492,713	4.86	.....	.....

^a U. S. Census Reports 1850, 1870, 1902, 1912: Reports on Financial Statistics of States; Secrist, Constitutional Restrictions upon Public Indebtedness.

Restrictions on State Debts. While all but three state constitutions impose restrictions on state debt, there are considerable variations in the terms of the constitutional provisions, and in the degree of limitations. Some writers have grouped the states in classes, placing in one class those which prohibit state debt except for certain purposes, and in another class those which limit the amount of debt, subject to certain exceptions. But most of the states which are classed as prohibiting debt provide for loans to meet temporary deficits up to a certain amount, and there seems to be no important distinction on this ground.

Most of the states permit loans for comparatively small amounts, either without limitation as to purpose or to meet casual deficits or temporary emergencies, or (in a few states) for expenses not otherwise provided for. The amounts thus authorized range, in most of the states from \$50,000 in Maryland and Rhode Island to \$500,000 in Kentucky. In Ohio the limit is \$750,000; in New York, Pennsylvania and Kansas \$1,000,000; and in Idaho \$2,000,000. The last named is the most liberal of the states naming a definite amount; and with this may be classed Utah, which permits loans for general purposes up to one and one-half per cent of the assessed valuation, Nevada to one per cent, and Wyoming, which requires a referendum on loans exceeding the taxes of the current year, and imposes a maximum limit of one per cent. The limits in the other states, fixed in most cases many years ago, are so low, that they are inadequate to take care of temporary difficulties on the present scale of state expenditures.

Delaware, Indiana, North Carolina, South Carolina, Virginia and West Virginia, permit loans for casual deficits or for ordinary and current expenses, without fixing any definite limit. Louisiana prohibits state debt except for refunding, or for suppressing insurrection, repelling invasion or in time of war. Arkansas prohibits the state and municipalities from loaning their credit for any purpose, prohibits municipalities from incurring interest bearing debt except to provide for debt existing at the adoption of the constitution of 1874, and pro-

vides that "the State shall never issue any interest bearing warrants or scrip."

Most of the states except from the debt restrictions, loans to suppress insurrection, to repel invasion or in time of war; and loans for such purposes may be authorized by the legislatures without limit. But three states—Arkansas, Missouri and South Carolina—make no such exception.

A number of states (15) authorize loans for refunding previously existing debts. Most of these are southern states (Arkansas, Florida, Georgia, Louisiana, Missouri, Kentucky, New Mexico, Texas, Virginia and West Virginia); but there are similar provisions in the constitutions of Delaware, Ohio, Pennsylvania and North Dakota. The Colorado constitution has a specific provision authorizing loans not to exceed \$2,115,000 to fund outstanding warrants, and the interest thereon. Indiana authorizes loans to pay the interest on the state debt.

Fifteen states authorize debts outside of the limitations, provided the law for the loans is submitted to a popular referendum. These include New York, New Jersey, Rhode Island and South Carolina in the eastern part of the country; Illinois, Iowa, Kansas, Kentucky and Oklahoma in the central section; and California, Idaho, Montana, New Mexico, Washington and Wyoming in the western section. In most cases such loans are authorized by a majority of those voting on the question; but in Kansas a majority of those voting at the election is required. Usually there is no limit as to the amount which may be borrowed, if approved by the popular referendum; but New Mexico and Wyoming fix a maximum limit of one per cent for the total amount of the state debt.

In most of the other states, debts except for the amounts and purposes authorized, are prohibited.

Delaware, Maryland, Massachusetts and North Carolina impose special conditions on borrowing. In Delaware a vote of three-fourths of the members elected to each House is required, except to meet casual deficits, to pay debts, or for invasion, insurrection or war. In Maryland no debt may be contracted unless by a law providing for a tax to pay interest and to discharge the principal within fifteen years, except for temporary deficits and for defense. In North Carolina, no new debt may be contracted (except for casual deficits or for defense, or to suppress insurrection) until the state bonds are at par. Massachusetts requires a vote of two-thirds of each House for loans except in case of invasion, insurrection or for defense or loans in anticipation of revenues.

In addition to the general restrictions on state debts, nearly all of the state constitutions (the exceptions are Connecticut, New Hampshire and Vermont), prohibit the loan or pledge of state credit to private enterprises or localities or both, and also prohibit the state from subscribing to the stock of private corporations, or assuming the liabilities of individuals, associations or corporations. About fifteen states prohibit the loan of state credit to local government units; and about the same number prohibit the state from assuming the debts

of local governments, unless incurred to repel invasion, suppress insurrection or defend the state. In Mississippi and Tennessee the restrictions on aid to private enterprises are the only limitations on state debt.

Some states also have more specific prohibitions against state aid to particular undertakings, such as railroads, canals and telegraph lines. Such provisions are in the constitutions of Illinois, Montana, Minnesota, New Mexico, Utah and Wyoming. But in Illinois, a debt for the improvement of state waterways has been authorized by constitutional amendment. Alabama specifically prohibits the loan of public credit to any banking company.

A few states make exceptions to the prohibition on the loan of state credit, in favor of certain educational and charitable purposes.

Of more importance are recent amendments or referendum votes authorizing state loans for public works and enterprises. New York has issued \$118,000,000 in bonds for canals, and \$65,000,000 for state highways; Illinois, in 1908, authorized a bond issue of \$20,000,000 for waterway improvement, and in 1918 a bond issue of \$60,000,000 for state roads. Missouri, in 1911, voted for a loan of \$3,500,000 for rebuilding the state capitol. California, in 1912, approved a loan of \$12,000,000 for public highways. Oregon, in 1912, authorized loans up to two per cent of the assessed valuation for roads, and in 1916 loans to the same amount for farm loans. In 1914, Wyoming voted for a bond issue for highways; and in 1918 Pennsylvania authorized a bond issue of \$50,000,000 for roads. Proposals for bond issues for roads and other public improvements have been submitted by the Maine and Wisconsin legislatures in 1919.

In North and South Dakota, a number of constitutional amendments have been adopted, authorizing further important extensions of state activity, with provisions for increased borrowing power. North Dakota, in 1912 and 1914, authorized the establishment of state grain elevators; and South Dakota, in 1914, authorized a system of rural credits. In 1918, both of these states adopted amendments providing for state hail insurance, and other public works, utilities and business enterprises, such as mining, cement manufacture, electric power and banking. In South Dakota, the state may loan its credit to or take stock in corporations for developing natural resources up to one-half of one per cent of the assessed valuation of property. The North Dakota provisions as to bond issues are printed in the appendix to this pamphlet.

The full effect of recent amendments and authorizations for larger state debt has not been felt; and state debts are still relatively small compared with national and municipal debts. The states with the largest per capita state debts in 1918 are shown below; with the debt of Illinois given for purposes of comparison.

State Debts of Certain States, 1918.^a

State.	Gross Debt.		Net Debt.	
	Total.	Per Capita.	Total.	Per Capita.
New York.....	\$241,164,230	\$22.85	\$181,288,942	\$17.18
Massachusetts.....	134,158,289	35.57	87,984,094	23.33
California.....	45,378,002	14.83	39,127,408	12.73
Maryland.....	27,692,417	20.20	20,155,983	14.70
Virginia.....	23,931,314	10.84	22,862,287	10.36
Ohio.....	17,600,672	3.36	5,346,514	1.02
Tennessee.....	17,299,492	7.51	16,004,691	6.94
Alabama.....	15,950,466	6.77	13,277,114	5.64
Louisiana.....	14,499,669	7.81	13,723,448	7.39
Connecticut.....	12,733,351	10.14	8,568,763	6.80
North Carolina.....	10,020,306	4.12	9,488,150	3.90
Illinois.....	3,996,852	.64	2,056,920	.33

^a U. S. Census: Financial Statistics of States, 1918.

Of these states, Maryland, Massachusetts and Connecticut have no important constitutional restrictions on state debt; Louisiana, North Carolina, Ohio and Virginia prohibit state debt, with the usual exceptions; and the other states require a referendum on state debt, with the usual exceptions.

Nearly two-thirds of the gross state debt of Massachusetts is for municipal improvements in the metropolitan district, for which the district is taxed. This is properly a municipal debt; and the state debt proper is about \$30,000,000. Of the aggregate state debts in 1918, \$296,145,795 were for highways, and \$32,532,500 for public service enterprises.—most of the latter in Massachusetts, Georgia, South Dakota and California.

The per capita state debt of Illinois in 1918 (33 cents) was lower than in all but nine states; but this situation will be altered with the issue of the waterway and highway bonds now authorized.

Restrictions on Municipal Debts. All but nine states impose some restrictions on the loan of municipal credit to private enterprises. The nine exceptions are: Maine, Massachusetts, Rhode Island, Vermont, South Carolina, Indiana, Iowa, Kansas and Wisconsin.

Thirty states prohibit municipalities from loaning their credit to any private corporations: Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, New Jersey, New York, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington and Wyoming. Several other states impose partial prohibitions or other restrictions: Connecticut prohibits aid for railroads; Nevada prohibits aid for any corporation or association except railroads; Minnesota places a limit of five per cent of the assessed valuation; Nebraska requires a referendum with a maximum limit of ten per cent of the assessed valuation; North Carolina and Tennessee require a local referendum. In Maryland local public notice and a majority vote of all the members of each House are required.

Twenty-eight states place a limitation on the total debt of each municipal corporation based in most cases on the assessed valuation of property for taxation. The limits established range from one and one-half per cent in Washington to eighteen per cent in Virginia, as shown in the following list:

- 1½ to 5 per cent. Washington.
- 2 per cent. Indiana and Wyoming.
- 2 to 10 per cent. Kentucky.
- 3 per cent. Colorado and Montana.
- 4 per cent. Arizona, New Mexico and Utah.
- 5 per cent. Alabama, Illinois, Iowa, Missouri, North Dakota, Oklahoma, South Dakota, West Virginia and Wisconsin.
- 5 to 7½ per cent. Maine.
- 7 per cent. Arkansas, Georgia and Pennsylvania.
- 8 per cent. South Carolina.
- 10 per cent. Louisiana and New York. (The latter based on real estate valuation.)
- 18 per cent. Virginia (on real estate valuation.)

A number of states also require a local referendum on the issue of bonds by municipalities or for making loans beyond certain limits. In eight states (Alabama, Arkansas, Colorado, Georgia, Louisiana, New Mexico, North Carolina and West Virginia), a referendum vote is required for all loans, with exceptions in some cases for refunding loans, temporary loans or loans for water works; and in three of these states (Colorado, Louisiana and New Mexico) the referendum is to a vote of the tax payers. In six states (California, Idaho, Kentucky, Missouri, Oklahoma and Utah) a popular vote is required on all debts which exceed the income and revenue for that year. Five states (Arizona, Indiana, North Dakota, Pennsylvania, South Carolina) require a referendum for loans beyond the normal debt limit. In Arizona, the approval of the taxpayers is required for loans over four per cent of the assessed valuation. In Indiana loans outside the debt limits may be incurred in time of war, invasion or other great public calamity, on petition of a majority of the property owners. In North Dakota, loans over five per cent of the assessed valuation may be made up to eight per cent, when approved by a two-thirds vote of the electors. In Washington debts over one and one-half per cent of the assessed valuation may be incurred up to five per cent when approved by a three-fifths vote of the electors. In Pennsylvania, debts over two per cent of the assessed valuation require a majority vote of the electors; and any municipality, except Philadelphia, may go beyond the seven per cent limit to ten per cent, if assented to by three-fifths of the electors. In Philadelphia debt may be incurred up to ten per cent if approved by a majority vote of the electors. In South Carolina debts for certain public utilities may be incurred over the eight per cent limit with the approval of the electors.

In thirteen states, the constitutions prescribe the maximum period for which loans may be made, ranging from 15 to 75 years as follows:

15 years: Colorado.

- 20 years: Idaho, Illinois, Missouri and Wisconsin.
- 25 years: Oklahoma.
- 30 years: Georgia and Pennsylvania.
- 34 years: West Virginia.
- 35 years: Arkansas.
- 40 years: Kentucky, Louisiana and California.
- 50 years: New Mexico and Pennsylvania (for Philadelphia).
- 75 years: California (San Francisco, San Jose and Santa Clara).

These states and three others (Ohio, South Carolina and South Dakota) also require municipalities in making loans to levy a tax to pay interest and principal. Several states also provide that money borrowed shall be applied to the purpose for which it was obtained or to repay the loan, and to no other purpose.

Mainly since 1900 there has been a marked tendency to extend the borrowing powers of municipalities for waterworks, sewers, lighting plants and other public utilities. About twenty states now authorize loans for some or all of these purposes beyond the ordinary debt limit.

The Virginia constitution of 1902 exempts loans for waterworks and other revenue undertakings from the debt limit. Texas, in 1904 authorized loans for roads, and for irrigation, drainage and navigation works. The Oklahoma constitution authorizes municipalities to engage in any business enterprise, and provides for loans for public utilities above the ordinary limit of five per cent, with the approval of the taxpayers. South Dakota, in 1908, authorized additional loans for street railways and lighting plants; and South Carolina and Utah in 1910 extended the borrowing power of municipalities for certain public improvements.

The New York constitutional provision of 1884 exempted temporary revenue bonds and loans for water supply from the debt limit. Another amendment adopted in 1909 provides that the debt of New York City for property, railroads, docks and other improvements shall not be included if the city's net income from such property or improvements is more than the interest payments on debts incurred for such purposes.

The Michigan constitution of 1908 authorizes a city or village requiring a public utility "to issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality, but shall be secured only upon the property and revenues of such public utility including a franchise stating the terms under which in case of foreclosure, the purchaser may operate the same and which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

Ohio, in 1912, adopted an identical provision for public utility loans, and a similar provision for loans secured by mortgage of property acquired by excess condemnation.

Pennsylvania, in 1913, adopted a constitutional amendment combining the New York and Michigan provisions, excluding from

municipal debt obligations of any county or municipality, other than Philadelphia, for waterworks, subways, or street railways, if the net revenue is sufficient to pay interest and sinking fund charges, or if the obligations are secured by liens upon the respective properties and impose no municipal liability. Another amendment relating to the borrowing power of Philadelphia was adopted in 1918, which excludes from the debt limit, the debt for public improvements which yield an annual current net revenue.

In Wisconsin, an amendment has been passed by one legislature in 1919, authorizing additional loans for public utilities.

Constitutional restrictions on local debt have been evaded in other states, as in Illinois, by the creation of a series of overlapping municipal authorities covering much the same territory, each of which may borrow and levy taxes up to the limits established. To meet this situation, two states have adopted provisions to limit the aggregate debt of such overlapping authorities.

In Nebraska no county with all its subdivisions may grant aid to railroads in excess of ten per cent of the assessed valuation, except that by a two-thirds vote of the electors a further debt of five per cent may be incurred. The South Carolina constitution, which places an eight per cent limit on the debt of each municipality, further provides that where there are two or more municipal corporations covering the same territory, "the aggregate indebtedness over and upon any territory of this State shall not exceed fifteen per cent of all taxable property in such territory."

Thirteen state constitutions contain provisions directing the legislature to restrict the borrowing power of cities and other municipalities. About half of these are states with other specific constitutional restrictions—Arkansas, New York, North Dakota, South Carolina, South Dakota, Wisconsin and Wyoming. In Kansas, Michigan, Mississippi, Nevada, North Carolina, Ohio and Oregon, limitation of municipal debt is left to legislative control, as it is also in Massachusetts and other states with no constitutional provisions. Massachusetts has recently enacted important legislation regulating borrowing in that state.

The following table shows the aggregate municipal debt in the United States and in the states with the largest amount of such debt in 1912.

	Municipal Debt.	Assessed Valuation.	Per Cent.	Per Capita.
United States.....	\$3,475,954,353	\$69,452,936,104	5	\$ 35.81
New York.....	1,046,226,813	11,131,778,917	10	107.71
Pennsylvania.....	245,979,219	5,068,802,988	5	30.34
Ohio.....	234,525,134	6,481,059,158	3.6	47.23
Massachusetts.....	187,578,004	4,803,078,625	4	52.86
New Jersey.....	169,527,120	2,490,490,534	6.5	61.66
Illinois.....	137,207,747	7,031,019,696 ^a	2	23.24
California.....	136,528,824	2,921,277,451	5	51.18

^a Assessors' "Full Value".

It will be noted that the aggregate of municipal debts in Illinois is less per capita than in any of the other states or in the United

States as a whole. The percentage of debt to assessed valuation was also much lower than in the United States as a whole or in any of the other states. The percentage of municipal debts to valuation was highest (ten per cent) in New York.

An analysis of municipal debts in the United States from 1880 to 1912 shows that a much larger part of the recent debt than the earlier debt is for productive undertakings, and a smaller proportion is for other purposes, such as war loans, railroad aid or refunding earlier loans.¹⁰

Conclusions. The only question which seems likely to arise in connection with the provisions in the Illinois constitution relating to state debt is as to the desirability of increasing the amount of debt authorized to meet casual deficits, so as to correspond with the present scale of state financial transactions.

The general prevalence of limitations on municipal debt indicates the recognized need for some method of restricting the borrowing power of local governments. Criticism is made, however, of the mechanical and rigid character of the constitutional limitations in the United States. The method of imposing an arbitrary percentage limit on valuation does not take into account the different purposes for which debt may be incurred, nor the varying needs of different classes of local authorities or different communities. The wide variations in the percentage limits show the absence of any consensus of opinion as to a satisfactory limit of this kind. In operation, the effect of these limitations is frequently altered by the extent of undervaluation in the assessment of property (which may vary from time to time, as it has in Illinois), and by the device of creating overlapping districts, each of which may borrow up to the constitutional limit. The recent provisions exempting loans for revenue producing public utilities (adopted in states with relatively high limits), place such debts on a different basis from those to be paid from taxation, and reflect a more liberal policy toward the extension of municipal functions.

While some constitutional provisions on municipal debt are advisable, specific limitations on such debts in the constitution do not seem to be satisfactory. It does not appear that in states such as Michigan and Ohio, where the limitation on the amount of debt is left to legislative action, debt conditions are any worse than in states where the limits are fixed in the constitution. By statute provision could be made for a system of administrative control, based on a study of local conditions, similar to that now exercised in the case of securities for public utility corporations, and to that used in Great Britain for the loans of municipal authorities, a plan which has also been adopted in Massachusetts for loans by the towns in that state.

¹⁰ F. E. Clark: *The Purposes of the Indebtedness of American Cities, 1880-1912.*

APPENDIX NO. 1

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APPENDIX NO. 2. ILLINOIS CONSTITUTION,

ARTICLE IX

Section 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, venders of patents and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

Sec. 2. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this constitution.

Sec. 3. The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property.

Sec. 4. The general assembly shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes or special assessments for State, county, municipal or other purposes, that a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes; and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order of judgment of some court of record.

Sec. 5. The right of redemption from all sales of real estate for the non-payment of taxes or special assessments of any character whatever, shall exist in favor of owners and persons interested in such real estate for a period of not less than two years from such sales thereof. And the general assembly shall provide, by law, for reason-

able notice to be given to the owners or parties interested, by publication or otherwise, of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire: Provided, that occupants shall in all cases be served with personal notice before the time of redemption expires.

Sec. 6. The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

Sec. 7. All taxes levied for state purposes shall be paid into the state treasury.

Sec. 8. County authorities shall never assess taxes the aggregate of which shall exceed seventy-five cents per one hundred dollars valuation except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

Sec. 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment or by special taxation of contiguous property or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

Sec. 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

Sec. 11. No person who is in default, as collector or custodian of money or property belonging to a municipal corporation, shall be eligible to any office in or under such corporation. The fees, salary or compensation of no municipal officer who is elected or appointed for a definite term of office shall be increased or diminished during such term.

Sec. 12. No county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. Any county, city, school district or other municipal corporation incurring any indebtedness as aforesaid, shall before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest of such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting

the same. This section shall not be construed to prevent any county, city, township, school district or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor.

Sec. 13. The corporate authorities of the city of Chicago are hereby authorized to issue interest bearing bonds of said city to an amount not exceeding five million dollars, at a rate of interest not to exceed five per centum per annum, the principal payable within thirty years from the date of their issue, and the proceeds thereof shall be paid to the treasurer of the World's Columbian Exposition, and used and disbursed by him under the direction and control of the directors, in aid of the World's Columbian Exposition, to be held in the city of Chicago, in pursuance of an Act of Congress of the United States.

Provided, that if at an election for the adoption of this amendment to the constitution a majority of the votes cast within the limits of the city of Chicago shall be against its adoption, then no bonds shall be issued under this amendment.

And said corporate authorities shall be repaid as large a proportionate amount of the aid given by them as is repaid to the stockholders on the sums subscribed and paid by them and the money so received shall be used in the redemption of the bonds issued as aforesaid, provided that said authorities may take in whole or in part of the sum coming to them any permanent improvements placed on land held or controlled by them.

And, provided, further, that no such indebtedness so created shall in any part thereof be paid by the state, or from any state revenue, tax or fund, but the same shall be paid by the said city of Chicago alone. (Section 13 added by an amendment of 1890).

APPENDIX NO. 3. CONSTITUTIONAL PROVISIONS ON TAXATION

(A) New York Constitution.

Article III, Section 18. The Legislature shall not pass a private or local bill in any of the following cases:

. . . . Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property. . . .

Sec. 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied and it shall not be sufficient to refer to any other law to fix such tax or object.

Sec. 25. On the final passage, in either house of the legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

(B) Pennsylvania Constitution.

Article IX, Section 1. Taxes to be Uniform. Exemptions. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the general assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

Sec. 2. Exemption from Taxation Limited. All laws exempting property from taxation, other than the property above enumerated, shall be void.

Sec. 3. Taxation of Corporations. The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party.

(C) Kentucky Constitution.

Section 171. The general assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the esti-

mated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

The general assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.

Any law passed or enacted by the general assembly pursuant to the provisions of or under this amendment, or amended section of the constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate, shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections, or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the Secretary of State not more than four months after the final adjournment of the Legislative Assembly which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general elections except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become a law when approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidate for Governor at the regular election, last preceding the filing of any petition, shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be ordered by the Legislative Assembly at any time any acts or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year of one thousand nine hundred and seventeen. After that time the power of the referendum may be ordered either by the petition signed by five per cent of the legal voters or by the Legislative Assembly at the time said acts or bills are enacted. The General Assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act, shall not delay the remainder of that act from becoming operative. (As amended 1915).

Sec. 174. All property, whether owned by natural persons or corporations, shall be taxed in proportion to its value, unless exempted by this constitution; and all corporate property shall pay the same rate of taxation paid by individual property. Nothing in this constitution shall be construed to prevent the general assembly from providing for taxation based on income, licenses or franchises.

(D) Maryland Constitution.

Declaration of Rights, Section 15. That the levying of taxes by the poll is grievous and oppressive and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the general assembly shall by uniform rules provide for separate assessment of land and classification and sub-classifications of improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the state for the support of the general State Government, and by the counties and by the City of Baltimore for their respective purposes, shall be uniform as to land within the taxing district, and uniform within the class or sub-class of improvements on land and personal property which the respective taxing powers may have directed to be subjected to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community. (As amended 1915).

(E) South Dakota Constitution.

Article XI, Sec. 2. To the end that the burden of taxation may be equitable upon all property, and in order that no property which is made subject to taxation shall escape, the legislature is empowered to divide all property including moneys and credits as well as physical property into classes and to determine what class or classes of property shall be subject to taxation and what property, if any, shall not be subject to taxation. Taxes shall be uniform on all property of the same class, and shall be levied and collected for public purposes only. Taxes may be imposed upon any and all property including privileges, franchises and licenses to do business in the state. Gross earnings and net incomes may be considered in taxing any and all property, and the valuation of property for taxation purposes shall never exceed the actual value thereof. The legislature is empowered to impose taxes upon incomes and occupations, and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided. (As amended 1918).

(F) Wisconsin Constitution.

Article VIII, Sec. 1. Taxation uniform; income taxes. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe. Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided. (As amended 1908).

(G) Minnesota Constitution.

Article IV, Sec. 32a. Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this state or operating its road therein, or which may be hereafter organized, shall, in lieu of all other taxes and assessments upon their real estate, roads, rolling stock, and other personal property, at and during the time and periods therein specified, pay into the treasury of this state a certain percentage therein mentioned of the gross earnings of such railroad companies now existing or hereafter organized, shall, before the same shall take effect or be in force, be submitted to a vote of the people of the state, and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them. (As amended 1871).

Article IX, Sec. 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property, and houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value \$200, for each household, individual or head of a family, as the legislature may determine: Provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation, and, provided further, that nothing herein contained shall be construed to affect, modify or repeal any existing law providing for the taxation of the gross earnings of railroads. (As amended 1906).

(H) Ohio Constitution.¹

Article XII, Section 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money, excepting all bonds outstanding on the first day of January, 1913, of the state of Ohio

¹ A proposed amendment containing the following language was voted on in November, 1918:

"The general assembly shall provide for the raising of revenues for all state and local purposes in such manner as it shall deem proper. The subjects of taxation for state and local purposes shall be classified, and the rate of taxation shall be uniform on all subjects of the same class, and shall be just to the subject taxed."

It was approved by voters with a majority of over 30,000, but at the same time another amendment to the same section, to prevent double taxation of mortgages (which repeated the former uniform tax provision) was adopted by a larger majority; and the Supreme Court held that there was a conflict between the amendments and that the classification amendment was not carried. The above text is that as amended by the amendment of 1918 to prevent double taxation of mortgages.

or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and by the means of instruction in connection therewith, which bonds outstanding on the first day of January, 1913, shall be exempt from taxation, but burying grounds, public school houses, houses used exclusively for public worship; institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; and laws may be passed to provide against the double taxation that results from the taxation of both the real estate and the mortgage or the debt secured thereby, or other lien upon it, but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law. (As amended 1918).

(I) California Constitution.

Article XIII, Sec. 1. All property in the state except as otherwise in this constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word "property", as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such debt, shall not be considered property subject to taxation . . . (As amended 1910).

Sec. 14. Taxes levied, assessed and collected as hereinafter provided upon railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing room car and palace car companies, refrigerator, oil, stock, fruit, and other car-loaning and other car companies operating upon railroads in this State; companies doing express business on any railroad, steamboat, vessel or stage line in this State; telegraph companies; telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies; banks, banking associations, savings and loan societies, and trust companies; and taxes upon all franchises of every kind and nature, shall be entirely and exclusively for State purposes, and shall be levied, assessed and collected in the manner hereinafter provided. The word "companies" as used in this section shall include persons, partnerships, joint stock associations, companies, and corporations . . .

(e) Out of the revenues from the taxes provided for in this section, together with all other state revenues, there shall be first

set apart the moneys to be applied by the State to the support of the public school system and the State University. In the event that the above named revenues are at any time deemed insufficient to meet the annual expenditures of the State, including the above named expenditures for educational purposes, there may be levied, in the manner to be provided by law, a tax, for State purposes, on all the property in the State including the classes of property enumerated in this section, sufficient to meet the deficiency. All property enumerated in subdivisions a, b, and d of this section shall be subject to taxation, in the manner provided by law, to pay the principal and interest of any bonded indebtedness created and outstanding by any city, city and county, county, town, township or district, before the adoption of this section. The taxes so paid for principal and interest on such bonded indebtedness shall be deducted from the total amount paid in taxes for State purposes. (As amended 1910).

APPENDIX NO. 4. CONSTITUTIONAL PROVISIONS ON BUDGET METHODS

(A) Illinois Constitution.

Article IV, Sec. 16. The general assembly shall make no appropriation of money out of the treasury in any private law. Bills making appropriations for the pay of members and officers of the general assembly, and for the salaries of the officers of the government shall contain no provision on any other subject.

Sec. 17. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The auditor shall, within sixty days after the adjournment of each session of the general assembly, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

Sec. 18. Each general assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the State treasury, from funds belonging to the State, shall end with such fiscal quarter: Provided, the State may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate two hundred and fifty thousand dollars, and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war (for payment of which the faith of the State shall be pledged), shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people and have received a majority of the votes cast for members of the general assembly at such election. The general assembly shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall

be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrevocable until such debt be paid: And, provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

Sec. 19. The general assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; Provided, the general assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Sec. 20. The state shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual.

Sec. 25. The general assembly shall provide by law, that the fuel, stationery and printing paper furnished for the use of the State; the copying, printing, binding, and distributing the laws and journals, and all other printing ordered by the general assembly, shall be let by contract to the lowest responsible bidder; but the general assembly shall fix a maximum price, and no member thereof, or other officer of the state, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the Governor, and if he disapproves the same, there shall be a reletting of the contract, in such manner as shall be prescribed by law.

Sec. 26. The state of Illinois shall never be made defendant in any court of law or equity.

Sec. 33. The general assembly shall not appropriate out of the State treasury, or expend on account of the new capitol grounds, and construction, completion and furnishing of the State House, a sum exceeding in the aggregate \$3,500,000.00, inclusive of all appropriations heretofore made, without first submitting the proposition for an additional expenditure to the legal voters of the state at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure.

Article V, Sec. 7. The Governor shall, at the commencement of each session and at the close of his term of office, give to the general assembly information, by message, of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall account to the general assembly, and accompany his message with a statement of all moneys received and paid out by him from any funds subject to his order, with vouchers, and at the

commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

Sec. 16. Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the governor; but in all such cases the vote of each house shall be determined by yeas and nays, to be entered upon the journal. Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. And if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law, as to the residue, in like manner as if he had signed it. The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the governor with his objections; and if any item or section of said bill not approved by the governor shall be passed by two-thirds of the members elected to each of the two houses of the general assembly, it shall become part of said law, notwithstanding the objections of the governor. Any bill which shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the general assembly shall by their adjournment prevent its return, in which case it shall be filed with his objections in the office of the secretary of state, within ten days after such adjournment, or become a law. (As amended 1884).

Sec. 23. The officers named in this article shall receive for their services a salary, to be established by law, which shall not be increased or diminished during their official terms, and they shall not, after the expiration of the terms of those in office at the adoption of this constitution, receive to their own use any fees, costs, perquisites of office, or other compensation. And all fees that may hereafter be payable by law for any services performed by any officer provided for in this article of the constitution, shall be paid in advance into the state treasury.

Sec. 24. An office is a public position created by the constitution or law, continuing during the pleasure of the appointing power, or for

a fixed time with a successor elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished.

Article IX, Sec. 7. All taxes levied for state purposes shall be paid into the state treasury.

(B) Maryland Budget Amendment of 1916.

Article III, Sec. 52. The general assembly shall not appropriate any money out of the Treasury except in accordance with the following provisions:

Sub-Section A: Every appropriation bill shall be either a Budget Bill, or a Supplementary Appropriation Bill, as hereinafter mentioned.

Sub-Section B: First: Within twenty days after the convening of the General Assembly (except in the case of a newly elected Governor, and then within thirty days after his inauguration), unless such time shall be extended by the general assembly for the session at which the budget is to be submitted, the governor shall submit to the general assembly two budgets, one for each of the ensuing fiscal years. Each budget shall contain a complete plan of proposed expenditures and estimated revenues for the particular fiscal year to which it relates; and shall show the estimated surplus or deficit of revenues at the end of such year. Accompanying each budget shall be a statement showing: (1) the revenues and expenditures for each of the two fiscal years next preceding; (2) the current assets, liabilities, reserves and surplus or deficit of the State; (3) the debts and funds of the State; (4) an estimate of the State's financial condition as of the beginning and end of each of the fiscal years covered by the two budgets above provided; (5) any explanation the governor may desire to make as to the important features of any budget and any suggestion as to methods for the reduction or increase of the state's revenue.

Second. Each budget shall be divided into two parts, and the first part shall be designated "Governmental Appropriations" and shall embrace an itemized estimate of the appropriations: (1) for the general assembly as certified to the governor in the manner hereinafter provided; (2) for the executive department; (3) for the judiciary department, as provided by law, certified to the governor by the comptroller; (4) to pay and discharge the principal and interest of the debt of the state of Maryland in conformity with Section 34 of Article III of the Constitution, and all laws enacted in pursuance thereof; (5) for the salaries payable by the State under the Constitution and laws of the State; (6) for the establishment and maintenance throughout the State of a thorough and efficient system of public schools in conformity with Article VIII of the Constitution and with the laws of the State; (7) for such other purposes as are set forth in the Constitution of the State.

Third. The second part shall be designated "General Appropriations," and shall include all other estimates of appropriations.

The Governor shall deliver to the presiding officer of each House the budgets and a bill for all the proposed appropriations of the budgets clearly itemized and classified; and the presiding officer of each house shall promptly cause said bill to be introduced therein, and such bill shall be known as the "Budget Bill." The Governor may, before final actions thereon by the General Assembly, amend or supplement either of said budgets to correct an oversight or in case of an emergency, with the consent of the general assembly by delivering such an amendment or supplement to the presiding officers of both houses; and such amendment or supplement shall thereby become a part of said budget bill as an addition to the items of said bill or as a modification of or a substitute for any item of said bill such amendment or supplement may affect.

The general assembly shall not amend the budget bill so as to affect either the obligations of the state under Section 34 of Article III of the Constitution, or the provisions made by the laws of the state for the establishment and maintenance of a system of public schools, or the payment of any salaries required to be paid by the State of Maryland by the Constitution thereof; and the general assembly may amend the bill by increasing or diminishing the items therein relating to the general assembly, and by increasing the items therein relating to the judiciary, but except as hereinbefore specified, may not alter the said bill except to strike out or reduce items therein, provided, however, that the salary or compensation of any public officer shall not be decreased during his term of office; and such bill when and as passed by both houses shall be a law immediately without further action by the governor.

Fourth. The governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for State's money, as have been designated by the governor for this purpose, shall have the right, and when requested by either house of the legislature, it shall be their duty to appear and be heard with respect to any budget bill during the consideration thereof, and to answer inquiries relative thereto.

Sub-Section C: Supplementary Appropriation Bills: Neither House shall consider other appropriations until the Budget Bill has been finally acted upon by both Houses, and no such other appropriation shall be valid except in accordance with the provisions following: (1) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called herein a Supplementary Appropriation Bill; (a) Each Supplementary Appropriation Bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in said Bill; (3) No Supplementary Appropriation Bill shall become a law unless it be passed in each house by a vote of a majority of the whole number of the members elected; and the yeas and nays recorded on its final passage; (4) Each Supplementary Appropriation Bill shall be presented to the governor of the state as provided in Section 17 of Article II of the Constitution and thereafter all the provisions of said Section shall apply.

Nothing in this amendment shall be construed as preventing the legislature from passing at any time in accordance with the provisions of Section 28 of Article III of the Constitution and subject to the Governor's power of approval as provided in Section 17 of Article II of the Constitution an appropriation bill to provide for the payment of any obligation of the State of Maryland within the protection of Section 10 of Article I of the Constitution of the United States.

Sub-Section D: General Provisions: First, If the Budget Bill shall not have been finally acted upon by the legislature three days before the expiration of its regular session, the governor may, and it shall be his duty to issue a proclamation extending the session for such further period as may, in his judgment, be necessary for the passage of such bill; but no other matter than such bill shall be considered during such extended session except a provision for the cost thereof.

Second. The Governor for the purpose of making up his budgets shall have the power, and it shall be his duty, to acquire from the proper state officials, including herein all executive departments, all executive and administrative offices, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the Legislative Department, certified by the presiding officer of each House, of the judiciary, as provided by law, certified by the comptroller, and for the public schools, as provided by law, shall be transmitted to the governor, in such form and at such times as he shall direct, and shall be included in the budget without revision.

The governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies, and of all institutions applying for State moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments, and for the public schools as provided by law.

Third. The legislature may, from time to time, enact such laws, not inconsistent with this Section, as may be necessary and proper to carry out its provisions.

Fourth. In the event of any inconsistency between any of the provisions of this Section and any of the other provisions of the Constitution, the provisions of this Section shall prevail. But nothing herein shall in any manner affect the provisions of Section 34 of Article III of the Constitution or of any laws heretofore or hereafter passed in pursuance thereof, or be construed as preventing the governor from calling extraordinary sessions of the legislature, as provided by Section 16 of Article II, or as preventing the legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

(C) Massachusetts Budget Amendment of 1918.

Article LXIII, Section 1. Collection of Revenue.—All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof.

Sec. 2. The Budget.—Within three weeks after the convening of the general court the governor shall recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the general court may by law prescribe, or, in default thereof, as the governor shall determine. For the purpose of preparing his budget, the governor shall have power to require any board, commission, officer or department to furnish him with any information which he may deem necessary.

Sec. 3. The general appropriation bill.—All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The general court may increase, decrease, add or omit items in the budget. The general court may provide for its salaries, mileage, and expenses and for necessary expenditures in anticipation of appropriations, but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the governor. The governor may at any time recommend to the general court supplementary budgets which shall be subject to the same procedure as the original budget.

Sec. 4. Special Appropriation Bills.—After final action on the general appropriation bill or on recommendation of the governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained.

Sec. 5. Submission to the Governor.—The governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of said bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within five days after the bill shall have been presented to him, such items shall have the force of law unless the general court by adjournment shall prevent such transmission, in which case they shall not be law.

APPENDIX NO. 5. BUDGET PROVISIONS OF CIVIL ADMINISTRATIVE CODE OF ILLINOIS, 1917.

Sec. 36. The Department of Finance shall have power :

1. To prescribe and require the installation of a uniform system of bookkeeping, accounting and reporting for the several departments ;

2. To prescribe forms for accounts and financial reports and statements for the several departments ;

3. To supervise and examine the accounts and expenditures of the several departments ;

4. To examine, at any and all times, into the accuracy and legality of the accounts, receipts and expenditures of the public moneys and the disposition and use of the public property by the several departments ;

5. To keep such summary and controlling accounts as may be necessary to determine the accuracy of the detail accounts and reports from the several departments, and to prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations ;

6. To prescribe uniform rules governing specifications for purchases of supplies, the advertisement for proposals, the opening of bids and the making of awards, to keep a catalogue of prices current and to analyze and tabulate prices paid and quantities purchased ;

7. To examine, at any and all times, the accounts of every private corporation, institution, association or board receiving appropriations from the general assembly ;

8. To report to the Attorney General for such action, civil or criminal, as the Attorney General may deem necessary, all facts showing illegal expenditures of the public money or misappropriation of the public property ;

9. To examine and approve, or disapprove, vouchers, bills and claims of the several departments, and such as are by law made subject to the approval of the Governor and referred to it by the Governor, and no voucher, bill or claim of any department shall be allowed without its approval and certificate ;

10. To prescribe the form of receipt, voucher, bill or claim to be filed by the several departments with it ;

11. In settling the accounts of the several departments, to inquire into and make an inspection of articles and materials furnished or work and labor performed, for the purpose of ascertaining

that the prices, quality and amount of such articles or labor are fair, just and reasonable, and that all the requirements, express and implied, pertaining thereto have been complied with, and to reject and disallow any excess;

12. To prepare and report to the governor, when requested, estimates of the income and revenues of the state;

13. To prepare and submit to the governor biennially, not later than the first day of January preceding the convening of the General Assembly, a State budget;

14. To publish, from time to time, for the information of the several departments and of the general public, bulletins of the work of the government;

15. To investigate duplication of work of departments and the efficiency of the organization and administration of departments, and to formulate plans for the better coordination of departments.

Sec. 37. In the preparation of a State budget, the Director of Finance shall, not later than the fifteenth day of September in the year preceding the convening of the general assembly, distribute to all departments and to all offices and institutions of the state government (including the elective officers in the executive department and including the University of Illinois and the judicial department) the proper blanks necessary to the preparation of budget estimate, which blanks shall be in such form as shall be prescribed by the Director of Finance to procure among other things, information as to the revenues and expenditures for the two preceding fiscal years, the appropriations made by the previous General Assembly, the expenditures therefrom, encumbrances thereon, and the amounts unencumbered and unexpended, an estimate of the revenues and expenditures of the current fiscal year, and an estimate of the revenues and amounts needed for the respective departments and offices for the two years next succeeding beginning at the expiration of the first fiscal quarter after the adjournment of the general assembly. Each department, office and institution (including the elective officers in the executive and judicial departments and including the University of Illinois) shall, not later than the first day of November, file in the office of the Director of Finance its estimate of receipts and expenditures for the succeeding biennium. Such estimates shall be accompanied by a statement in writing giving facts and explanation of reasons for each item of expenditure requested. The Director of Finance may, in his discretion, make further inquiries and investigations as to any item desired. He may approve, disapprove or alter the estimates. He shall, on or before the first day of January preceding the convening of the general assembly, submit to the governor in writing his estimates of revenues and appropriations for the next succeeding biennium.

Sec. 38. The Governor shall as soon as possible and not later than four weeks after the organization of the general assembly submit a state budget, embracing therein the amounts recommended

by him to be appropriated to the respective departments, offices, and institutions, and for all other public purposes, the estimated revenues from taxation, the estimated revenues from sources other than taxation, and an estimate of the amount required to be raised by taxation. Together with such budget, the governor shall transmit the estimates of receipts and expenditures, as received by the Director of Finance, of the elective officers in the executive and judicial departments and of the University of Illinois.

Sec. 39. Each department shall, before an appropriation to such department becomes available for expenditure, prepare and submit to the department of finance an estimate of the amount required for each activity to be carried on, and accounts shall be kept and reports rendered showing the expenditures for each such purpose.

APPENDIX NO. 6. CONSTITUTIONAL PROVISIONS ON DEBT LIMITS

(A) Illinois Constitution.

Article IV, Sec. 18. Each general assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the State treasury, from funds belonging to the State, shall end with such fiscal quarter: Provided, the State may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate two hundred and fifty thousand dollars, and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the state in war (for payment of which the faith of the State shall be pledged), shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people and have received a majority of the votes cast for members of the general assembly at such election. The general assembly shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrevocable until such debt be paid: And, provided, further, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

Sec. 20. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual.

Sec. 33. The general assembly shall not appropriate out of the state treasury, or expend on account of the new capitol grounds, and construction, completion and furnishing of the state house, a sum exceeding in the aggregate \$3,500,000.00, inclusive of all appropriations heretofore made, without first submitting the proposition for an additional expenditure to the legal voters of the state at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure.

Article IX, Sec. 12. No county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness. Any county, city, school district or other municipal corporation incurring any indebtedness as aforesaid, shall before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest of such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any county, city, township, school district or other municipal corporation, from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor.

Separate section on Municipal Subscriptions. No county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: Provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

Separate section on Canal. The Illinois and Michigan Canal, or other canal or waterway owned by the State shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the State at a general election, and have been approved by a majority of all the votes polled at such election. The general assembly shall never loan the credit of the State or make appropriations from the treasury thereof, in aid of railroads or canals:

Provided, that any surplus earnings of any canal, waterway or water power, may be appropriated or pledged for its enlargement, maintenance or extensions; and

Provided further, that the general assembly may, by suitable legislation, provide for the construction of a deep waterway or canal from the present water power plant of the Sanitary District of Chicago, at or near Lockport, in the township of Lockport, in the county of Will, to a point in the Illinois River at or near Utica, which may be practical for a general plan and scheme of deep waterway along a route, which may be deemed most advantageous for such plan of deep waterway; and for the erection, equipment and maintenance of power plants, locks, bridges, dams and appliances sufficient and suitable for the development and utilization of the water power thereof; and authorize the issue, from time to time, of bonds of this State in a total amount not to exceed twenty million dollars, which shall draw interest, payable semi-annually, at a rate not to exceed four per cent per annum, the proceeds whereof may be applied as the general assembly may provide, in the construction of said waterway and in the

erection, equipment and maintenance of said power plants, locks, bridges, dams and appliances.

All power developed from said waterway may be leased in part or in whole, as the general assembly may by law provide; but in the event of any lease being so executed, the rental specified therein for water power shall be subject to a revaluation each ten years of the term created, and the income therefrom shall be paid into the treasury of the state. (As amended 1908.)

(B) Oklahoma Constitution.

Article X, Sec. 26. No county, city, town, township, school district, or other political corporation, or subdivision of the state, shall be allowed to become indebted, in any manner, for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of three-fifths of the voters thereof, voting at an election, to be held for that purpose, nor in cases requiring such assent, shall any indebtedness be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum of the valuation of the taxable property therein, to be ascertained from the last assessment for State and county purposes previous to the incurring of such indebtedness: Provided, That any county, city, town, township, school district, or other political corporation, or subdivision of the State, incurring any indebtedness, requiring the assent of the voters as aforesaid, shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.

Sec. 27. Any incorporated city or town in this State may, by a majority of the qualified property taxpaying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in section 26, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city: Provided, that any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by this constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same.

(C) Ohio Constitution.

Article XVIII, Sec. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such pub-

lic use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law. (Adopted 1912)

Sec. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure. (Adopted 1912.)

Sec. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books, and accounts of all municipal authorities, or of public undertakings conducted by such authorities. (Adopted 1912.)

(D) Pennsylvania Constitution.

Article IX, Sec. 8. The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fifteen of this article, shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, but the debt of the city of Philadelphia may be increased in such amount that the total city debt of said city shall not exceed ten per centum (10) upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt, or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. In ascertaining the borrowing capacity of the said city of Philadelphia, at any time, there shall be excluded from the calculation and deducted from such debt so much of the debt of said city as shall have been incurred, and the proceeds thereof invested, in any public improvements of any character which shall be yielding to the said city an annual current net revenue. The amount of such deduction shall be ascertained by capitalizing the annual net revenue from such improvement during the year immediately preceding the time of

such ascertainment; and such capitalization shall be estimated by ascertaining the principal amount which would yield such annual, current net revenue, at the average rate of interest, and sinking-fund charges payable upon the indebtedness incurred by said city for such purposes, up to the time of such ascertainment. The method of determining such amount, so to be deducted, may be prescribed by the general assembly. In incurring indebtedness for any purpose the city of Philadelphia may issue its obligations maturing not later than fifty (50) years from the date thereof, with provision for a sinking-fund sufficient to retire said obligations at maturity, the payment to such sinking-fund to be in equal or graded annual or other periodical installments. Where any indebtedness shall be or shall have been incurred by said city of Philadelphia for the purpose of the construction or improvement of public works of any character, from which income or revenue is to be derived by said city, or for the reclamation of land to be used in the construction of wharves or docks owned or to be owned by said city, such obligations may be in an amount sufficient to provide for, and may include the amount of, the interest and sinking-fund charges accruing and which may accrue thereon throughout the period of construction, and until the expiration of one year after the completion of the work for which said indebtedness shall have been incurred; and said city shall not be required to levy a tax to pay said interest and sinking-fund charges as required by section ten, article nine of the constitution of Pennsylvania, until the expiration of said period of one year after the completion of said work. (As amended 1918).

Sec. 15. Municipal Indebtedness for Certain Public Works. No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality, other than Philadelphia, to provide for the construction or acquisition of water-works, subways, underground railways or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality, within the meaning of section eight of article nine of the constitution of Pennsylvania or of this amendment, if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or, where the same is constructed by the county or municipality, after the completion thereof, shall have been sufficient to pay interest and sinking-fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the respective properties, and shall impose no municipal liability. Where municipalities or counties shall issue obligations to provide for the construction of property, as herein provided, said municipalities or counties may also issue obligations to provide for the interest and sinking-fund charges accruing thereon until said properties shall have been completed and in operation for a period of one year; and said municipalities and counties shall not be required to levy a tax to pay said interest and sinking-fund charges, as required by section ten of article nine of the constitution of Pennsylvania, until after said properties shall

have been operated by said counties or municipalities during said period of one year. Any of the said municipalities or counties may incur indebtedness in excess of seven per centum, and not exceeding ten per centum, of the assessed valuation of the taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, in such manner as shall be provided by law. (Amendment of 1913).

(E) North Dakota Constitution.

Article XII, Sec. 182. The state may issue or guarantee the payment of bonds, provided that all bonds in excess of two million dollars shall be secured by first mortgages upon real estate in amounts not to exceed one-half of its value; or upon real and personal property of state-owned utilities, enterprises or industries, in amounts not exceeding its value; and, provided further, that the state shall not issue or guarantee bonds upon property of state-owned utilities, enterprises or industries in excess of ten million dollars.

No future indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provisions, sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax, or of such other provisions, to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. No debt in excess of the limit named herein shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war or to provide for the public defense in case of threatened hostilities. (As amended 1918.)

Sec. 183. The debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein; provided, that any incorporated city may by a two-thirds vote, increase such indebtedness, three per centum on such assessed value beyond said five per cent limit. In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount of existing indebtedness, whether contracted prior or subsequent to the adoption of this constitution shall be included; provided, further, that any incorporated city may become indebted in any amount not exceeding four per centum on such assessed value, without regard to the existing indebtedness of such city for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district or any other political subdivision, shall be void.

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CONSTITUTIONAL CONVENTION

BULLETIN No. 5

The Short Ballot



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THE SHORT BALLOT.

I. SUMMARY.

The Ballot in Illinois. Under the first state constitution there were only eight officers to be voted for by each voter. Some additional local officers were made elective by statute. The constitution of 1848 provided for about twenty officers to be voted for by each voter; and the constitution of 1870 further increased the number to about twenty-five. There are also numerous additional local elective officers established by statute, mostly elected at numerous elections in the spring. Primary elections have increased the number of elections and also the length of the ballot. At the quadrennial November elections from twenty-five to thirty state and local officers are voted for throughout the state; in Cook county there are over forty such officers elected; and in addition the twenty-nine presidential electors. The ballots in Cook county at such elections often contain about four hundred names, and have had as many as 433 names. A typical ballot for a down state district in 1916 had 222 candidates for 49 offices.

The Ballot in other states and countries. Most American states have also a numerous list of elective officers and a long ballot; and in some instances the size of the ballot and the number of candidates are about as large as in Illinois. In a few states, however, there is a smaller number of elective offices and a shorter ballot. Ohio and Pennsylvania have only five and six elective State officers; and Massachusetts and Vermont have a smaller number of elective county officers than most states. In Maine, New Hampshire, New Jersey and Tennessee the governor is the only state executive officer elected at large; while Rhode Island has no elective county officers. Recent city charters and laws on municipal government have in most cases reduced the number of elective officials, and provided a short ballot for city elections. In the national government a short ballot system is provided.

In other countries, executive and judicial officers are appointive. The only elective officials are the members of representative bodies, and the ballot is much shorter and simpler than in this country. In Great Britain the ballot usually has only two or three names, and seldom more than five or six.

Criticism of the long ballot. Some criticism of the multiplicity of elective officers is to be found from comparatively early

times,—as in the Illinois constitutional convention of 1870. More recently the long ballot has been more actively opposed, on the ground that it imposes an impossible task on the voter, and in effect disfranchises the voter and prevents popular control of the government.

The short ballot movement. Since 1900 there has been an increasing demand for a “short ballot”, based on the principles of (1) electing only to the important offices which attract public attention, and (2) electing only a few officers at one time. These principles have been indorsed and supported by some of the most prominent men in public life, in different political parties, including all of the three latest Presidents of the United States (Roosevelt, Taft and Wilson), also by Governor Hughes and Senator Elihu Root of New York. The governors of more than three-fourths of the states have openly advocated the short ballot in their messages to the legislatures and in their annual conferences. Among these may be noted Governors Dunne and Lowden of Illinois.

More formal proposals for applying short ballot principles have been presented in a number of states. These include the proposals first brought forward in Oregon in 1909, the reports of economy and efficiency commissions on the reorganization of state government—notably in Iowa and Delaware—and the proposed revised constitution for the state of New York prepared by the constitutional convention of 1915. In Illinois the short ballot has received popular indorsement on a public policy vote in 1912, with 508,780 votes in favor to 165,270 against.

Specific problems. Some of the specific problems to be met in the application of short ballot principles may be briefly noted. In connection with the state executive officers, the governor may be made the only elective state officer; but special questions have been raised as to the need for a lieutenant governor, the independence of the auditor, and the position of the attorney-general. Elective judges may be reconciled with the short ballot by separate judicial elections, except in a metropolitan community like Chicago, where the large number of judges calls for special treatment. For county and other local officers, if constitutional requirements for elective officers are eliminated, changes in organization may be made by legislation, subject to local option, or under provisions for local home rule.

II. THE BALLOT IN ILLINOIS.

Early conditions—Constitution of 1818. Before Illinois was admitted to the Union as a state there was no general system of popular elections. During the territorial period county and township officers were appointed. Members of the territorial legislature, established in 1812, were elected apparently by oral or viva voce voting without the use of ballots.

Under the first state constitution (1818) only a few elective offices were provided,—two state officers, members of the legislature, and some county officers. Including the state's representative in Congress the list of elective officers was as follows:

Governor
Lieutenant Governor
Representative in Congress
State Senators
State Representatives
County Commissioners
Sheriff
Coroner

By another clause of the constitution viva voce voting was continued until changed by the General Assembly.

Section 22 of Article III of the Constitution of 1818 gave the governor what appears in itself to be a general power (by and with the advice and consent of the senate) to "appoint all officers whose offices are established by the constitution, or shall be established by law, and whose appointments are not herein otherwise provided for". But this power was in fact so limited by other provisions of the constitution and by later acts of the general assembly that the governor was without any real appointing power.

The section providing for the governor's power of appointment also provided that inferior officers should be appointed in such manner as the general assembly may prescribe. The article on the Judiciary gave to the general assembly the appointment of judges of the Supreme Court and all inferior courts. Section 10 of the Schedule provided that:

"An auditor of public accounts, an attorney general, and such other officers for the state as may be necessary, may be appointed by the general assembly, whose duties may be regulated by law."

The actual operation of these provisions has been described as follows:

"The governors were for a time allowed to appoint state's attorneys, recorders, state commissioners, bank directors, etc., but the legis-

lature afterwards vested by law the appointment of all these and many more in themselves. Occasionally, when in full political accord, the governor would be allowed the appointing power pretty freely, to perhaps be shorn of it by a succeeding legislature. In the administration of Duncan, who had forsaken Jackson and incurred the displeasure of the dominant party, the governor was finally stripped of all patronage, except the appointment of notaries public and public administrators. It was a bad feature of the constitution; it not only deprived the people of their just right to elect the various officers as at present, but led hordes of place hunters to repair to the seat of government at every session of the legislature to besiege and torment members for office. Indeed this was the chief occupation of many an honorable member. Innumerable intrigues and corruptions for place and power were indulged."¹

In the case of *Field v. People* (1839), it was stated that "the practical construction which this section has received takes from the governor all appointments except such as are expressly given him."² Even in the case of the Secretary of State, the Governor's power was limited by the concurrence of the Senate, and he could not remove that officer.

During the period of the first state constitution, some additional local officers were made elective by statute, including justices of the peace (1827), county clerks and treasurers (1837), county recorders and surveyors (1845), and also municipal officers in incorporated towns and cities.

Constitution of 1848—the long ballot introduced. When the second constitutional convention met in 1847, there was a strong demand to abolish the method of legislative appointments, and this was done by extending the system of popular elections. This was in accordance with a general tendency throughout the country, as indicated in the new constitutions and constitutional amendments in other states. But it may be noted that the elective system was expanded on account of dissatisfaction with legislative control, and did not deprive the executive of any important power.

In the new constitution the use of the ballot was definitely established, in place of the former system of viva voce voting; and at the same time the number of elective offices was notably increased. It was a ballot of considerable length which came into use at this time. The constitution provided for the following elective officers:

Elected at large:

Governor
Lieutenant Governor
Secretary of State
Auditor of Public Accounts
State Treasurer

¹ Davidson and Stuve: *History of Illinois*, p. 297.

² *Field v. People*, 3 Ill. 79 (1839).

Elected by districts:

- 3 judges of the Supreme Court
- Circuit judges
- 3 Clerks of the Supreme Court
- State's Attorneys
- 25 State Senators
- 75 Representatives

County Officers:

- County judge
- Clerk of Circuit Court
- Clerk of County Court
- Sheriff
- County Justices
- Justices of the Peace

All of these were elected at the regular November elections, except judges and supreme court clerks, who were chosen at judicial elections in June. Besides the state officers, there were also elected presidential electors every fourth year, and members of the national house of representatives every second year. Thus at the general elections, in presidential years, there were no less than fifteen state and local officers to be elected; and the presidential electors in addition.

With the establishment of the township system in 1849, a further list of town officers was established in all counties which adopted the township system. There were also municipal officers in cities and incorporated towns; and in the city charters enacted about this time (after 1850), the number of elective officers was notably increased. Thus in the Chicago charter of 1851, the following officers were elective: mayor, marshal, treasurer, collector, surveyor, attorney, chief and assistant engineers of the fire department, a street commissioner for each of the three divisions, and an alderman and a police constable for each ward.

These statutory local officers were, however, generally elected at a different time than the state and county officers provided for in the state constitution.

That the increase of elective officers in the constitution of 1848 was due to distrust of the legislature and not of the executive is evidenced by the retention of the section relating to the appointing power of the governor, with an important provision added curtailing the appointing power of the general assembly. The revised section reads:

"The Governor shall nominate and, by and with the advice and consent of the Senate (a majority of all the senators concurring) appoint all officers whose offices are established by the constitution, or which may be created by law, and whose appointments are not otherwise provided for; *and no such officer shall be appointed or elected by the general assembly.*"³

By continuing the provision for the governor's power of appointment and at the same time absolutely prohibiting appointments by the

³ Constitution of 1848, Art. V, Section 10.

general assembly, the convention of 1847 indicated forcibly that the main purpose of the changes made was to take away the appointing power of the general assembly. In consequence a firm basis was laid for the development of the governor's appointing power. As additional state officers were established, it became evident that the elective system could not be indefinitely extended, and such positions were for the most part filled by the governor.

This section was retained with minor changes in the constitution of 1870; and with the great expansion of state functions since that time both the number and importance of the appointive offices has steadily increased. No clear line of distinction now exists between the elective and appointive offices. Especially since the passage of the Civil Administrative Code in 1919, the appointed heads of some of the new administrative departments deal with matters of more importance and more public interest than some of the elective offices.

Constitution of 1870—A longer ballot. The third constitution of Illinois, that of 1870, added still further to the number of elective state and county offices and the length of the ballot. The following elective officers were authorized by this constitution:

Elected at large

- Governor
- Lieutenant Governor
- Secretary of State
- Auditor of Public Accounts
- Treasurer (Two years)
- Superintendent of Public Instruction
- Attorney General

Elected by districts

- 7 judges of the Supreme Court (1 from each district)
- 3 clerks of the Supreme Court (1 from each grand division)
- Circuit Judges
- 51 State Senators (1 from each district)
- 153 Representatives (3 from each district)

County Officers

- County Commissioners
- County Judge
- Probate Judge
- County Clerk
- Circuit Clerk
- Recorder of Deeds
- Sheriff
- Treasurer
- Coroner
- County Superintendent of Schools.

Not all of these, however, were to be elected at the same time. The judges continued to be elected in June; and the Superintendent of Public Instruction was to be elected in the middle of the four year term of the governor. County commissioners have been replaced by town supervisors in counties which have adopted the township system; and probate judges and recorders were authorized only for the larger counties. Allowing for these, and including members of Congress, there was a minimum of 17 state and local officers to be voted for at the quadrennial November elections, besides the presidential electors. In Cook County, where a special board of 15 county commissioners was provided, 10 elected at large from the City of Chicago, there were 30 officers to be elected in addition to the presidential electors at the quadrennial November election. Additional judges were also provided for Cook County, which increased the length of the ballot at the judicial elections.

Statutory changes. The ballot has been further lengthened and also changed in other respects by statutory legislation from time to time. The members of the state board of equalization were elected by congressional districts, but this board has been eliminated by act of 1919; and the trustees of the University of Illinois have also been made elective, three being chosen at each biennial election. Popular election of United States Senators has added another elective office.

The cities and villages act of 1872 provided a comparatively small list of elective officers for cities under this act. But additional elective local officers have been created by other legislation, especially by acts providing for local districts for particular purposes, such as school and road districts, drainage and sanitary districts, park districts and public health districts. Probate judges and clerks and county auditors have also been provided for the larger counties.

These additional elective officers are most numerous in Cook County, where there have been provided 20 circuit judges, 20 superior court judges, 31 municipal court judges, a board of sanitary district trustees, a board of assessors and a board of review.

Some of these new local officers are elected at the general November elections. But many of them are chosen at local elections held at various dates in the spring. The multiplication of these local elections has kept down the length of the ballot used at each election; but it has added to the burden on the conscientious voter who undertakes to exercise his political rights on all occasions.

The Official Ballot—The Little Ballot. The adoption of the official ballot in 1891 marked an important change in procedure, which emphasized the effect of previous measures. Up to this time ballots had been printed by candidates or party organizations, each ballot con-

taining only one list of names to be voted; and most voters did not trouble to examine all the different ballots containing all of the various candidates. But on the official ballot, all the candidates regularly nominated by all parties were given; and with a number of parties in the field, the total number of candidates presented to the voter now became bewildering. The problem was somewhat simplified for the regular party voter, by the use of the party column; but the appearance of the "blanket ballot" at a general election gave some indication of the task for the voter who attempted to exercise his personal choice for all of the numerous elective offices.

Special difficulties were soon evident in the voting on constitutional amendments and other measures submitted to popular vote. Such propositions did not adapt themselves to the party column system; and, as a result, they were often overlooked, and the vote on them fell to about twenty per cent of the vote for officers. To meet this condition an act was passed in 1899 providing that such measures should be printed on a separate ballot; and the result of the use of this "little ballot" in Illinois has been a marked increase in the vote cast on amendments and other propositions.

Primary Elections. The introduction of the primary election system has also affected the ballot and election methods in Illinois. It has meant, in the first place, a further increase in the number of elections, most notable in connection with the many local elections in the spring. In some of these local elections where there are but few contests this has seemed to add a good deal of unnecessary trouble and expense. Where there are active contests and many candidates, the ballot presents a puzzling problem to the voter. Separate ballots are prepared for each party; but there are no groups of rival candidates which can be voted for as a whole by a single mark; and each voter is called on to mark his selection for each of the numerous offices.

Frequency of Elections. The number of elections in Illinois is indicated by the table below. In the year of a presidential election there are no less than nine or ten regular public elections (outside of Chicago). There are six elections each year in the spring months; and in years when judges are elected there are seven elections within a period of six months.

Elections in Illinois.

Primary election for cities, February
 Township primary, (No time fixed by law)
 Township and Road District Election, April, first Tuesday
 Presidential primary, April, (every fourth year)
 School Trustees Election, April, second Saturday

City and Village Elections, April, (first or third Tuesday)
 School directors and Boards of Education, April, third Saturday
 Supreme Court and Circuit Judges, June
 State primaries, September, (every second year)
 General State election, November, (every second year)
 County Commissioners (in counties not under township organization), November, (every year)

Present conditions. As a result of constitutional and statutory provisions the voter in Illinois is called on to vote for the following elective officers:

Elected at large

Presidential electors (29)
 Governor
 Lieutenant Governor
 Secretary of State
 Auditor of Public Accounts
 Treasurer
 Superintendent of Public Instruction
 Attorney General
 Clerk of Supreme Court
 Trustees of the University of Illinois (9)
 United States Senators
 Representatives in Congress at large (2)

Elected by districts

Judges of the Supreme Court
 Circuit Judges
 Representatives in Congress
 State Senators
 Representatives

County Officers

State's Attorney
 County Judge
 County Clerk
 Circuit Clerk
 Sheriff
 Treasurer
 Coroner
 County Superintendent of Schools
 Surveyor
 Probate Judge (in larger counties)
 Clerk of Probate Court (in larger counties)
 Recorder (in larger counties)

County Auditors (in larger counties)
 County Commissioners (in counties not under township
 organization and in Cook county)

Township officers

Supervisor (also assistant supervisors in larger towns)
 Town Clerk
 Assessor
 Justices of the Peace
 Highway Commissioner
 Constables

City officers (under Cities and Villages Act)

Mayor
 City Clerk
 City Treasurer
 City Attorney
 Judge of City Court (in some cities)
 Aldermen

Village officers

Trustees
 Clerk
 Police magistrates

School officers

School trustees
 School directors or members of boards of education.
 Township boards of education (high school districts)

Omitting judges and local officers elected at other times, the voters throughout Illinois are called on at the quadrennial November election to vote for about 20 state and local officers, and in addition for 29 presidential electors, a total of about 50. The ballots at these elections regularly have the names of 100 to 150 candidates for state and local offices; and, including candidates for presidential electors, have from 200 to 250 names. A typical ballot for a down-state district in 1916 contained the names of 222 candidates for 49 offices.

In Chicago and Cook County there are twice as many state and local officials to be elected as in other counties. In addition to the usual state and county officers, there are several additional court clerks, 15 county commissioners and 10 municipal court judges chosen at the general November elections; and at the judicial elections there are now 40 circuit and superior court judges to be chosen in Cook County. In November, 1916 each male voter in Chicago was expected to vote for 71 different officials; and in November, 1918 for 55. In Cook County, outside of Chicago, each male voter was asked to vote for 61 officials in 1916 and for 35 in 1918. In a period of nine years, each male voter in Chicago is called on to vote for 149 elective officers.

and the total number of elective officials voted for in Chicago (excluding presidential electors) is 425.⁴

The largest ballots in Illinois are thus to be found in the City of Chicago. In November, 1906, the ballot measured two feet and two inches by eighteen and one-half inches, and contained 334 names of candidates. At the election in November, 1912, when 57 officials were to be elected (or 86 including the presidential electors) there were six party tickets containing in one district 279 candidates for public office and 174 candidates for presidential electors,—a total of 433 names on the ballot. At the primary election in 1914, there were 382 candidates for 51 positions on the democratic ballot in one district. There were 19 candidates for State Treasurer, and 148 candidates for the 10 county commissioners to be elected in the city.

See pamphlet on Chicago and Cook County.

III. THE BALLOT IN OTHER STATES AND COUNTRIES.

Long Ballot States. Most of the American states now have a numerous list of elective officers and a long ballot; but in few of them is the list of officers on the ballot so long as in Illinois. The number of elective state, district and county officers in some of the larger states is shown in the following table:

	<i>Elective officers.^a</i>		Members of Legis- lature		County Officers	Total
	State Officers	Courts				
New York.....	7	4	2	6		19
Pennsylvania	5	6	2	11		24
Illinois	12	7	4	11		34
Ohio	6	6	2	10		24
Missouri	7	6	2	15		30
Texas	9	6	2	5		22
California	9	4	2	16		31

^a Compiled from table in Massachusetts Constitutional Convention Bulletin No. 10. These figures show the normal number of officials to be voted for by each voter, and do not take into account the special conditions in particular districts.

It will be noted that the number of elective state officers in Pennsylvania and Ohio is smaller than in the other states. In Pennsylvania, the Secretary of the Commonwealth, Attorney General and Superintendent of Public Instruction are appointed by the Governor. On the other hand, the number of elective county officers in California and Missouri is unusually large, and in New York and Texas is comparatively small. But none of these can be considered a short ballot state; and most of the other states have a similar list of elective officers.

A few illustrations may be cited of long ballots in some of these states. At the general election in 1908, the ballot in Cleveland, Ohio, contained the names of 391 candidates for 45 offices,—not including the 23 presidential electors. In 1910, there were 210 candidates for 42 positions. In 1911, there were 324 candidates of the two principal parties at the primary election, and 132 candidates on four tickets for 40 offices at the final election in November.⁵ In 1916 there were 231 candidates for 58 offices.

One of the longest lists of names on an election ballot was that in a New York city democratic primary, before the introduction of

⁵ The Need of a Short Ballot for Ohio, p. 8.

the direct primary, which contained 835 names of candidates for delegates to nominating conventions.⁶

Shorter Ballot States and Cities: Some states, however, have a smaller number of elective officers and a shorter ballot than is the general rule in the United States. The most notable instances are Massachusetts, Connecticut, Maine, New Hampshire, New Jersey, Rhode Island, Tennessee and Vermont.

In Massachusetts, all the judges are appointive, and there are comparatively few elective county officials. Town elections and city elections come at a different date from the state and national elections. Nevertheless there are six state officers elected at large, eight councilors elected by districts, seven elective county officers; and with members of the state legislature and congress, there are about twenty state and local officials to be elected,—about twelve at one election,—besides presidential electors every fourth year. State officers have been elected every year; but by constitutional amendment adopted in 1918, they will be chosen for two year terms beginning in 1920, thus reducing the number of elections.

Connecticut and Vermont have each six elective state officers; in Vermont there are five elective county officers and in Connecticut only two. Including members of the legislature, there are ten elective officers in Connecticut and thirteen in Vermont, other than municipal officials. In Rhode Island there are five elective state officials; but the two county officials (sheriff and court clerk) are appointed, so that including members of the legislature there are only seven officials to be voted for at a general state election.

In four states the governor is the only state executive officer elected at large,—Maine, New Hampshire, New Jersey and Tennessee. In addition there are elected from five to eight county officers and members of the legislature; in New Hampshire also five members of the council elected by districts; and in Tennessee judges of the supreme, circuit and chancery courts. In New Jersey, the two most important counties each elect a number of members of the legislature on a general ticket; and this makes a distinctly long ballot in these counties.

⁶ C. A. Beard: *The Ballot's Burden*, in *Political Science Quarterly*, Vol. 24, p. 601. (1909).

Elective Officers in Short Ballot States

Massachusetts	Connecticut	Rhode Island	Vermont
Governor Lieut. Governor Secy. of the Commonwealth Treasurer Auditor Attorney General Councillors Senators Representatives County Clerk Register of Wills Register of Deeds Sheriff Attorney County Comrs. County Treasurer	Governor Lieut. Governor Secretary of State Treasurer Controller Attorney General Senators Representatives Clerk of Probate Sheriff	Governor Lieut. Governor Secy. of State Treasurer Attorney General Senators Representatives	Governor Lieut. Governor Secy of State Treasurer Auditor Councillors Senators Representatives Probate Judge Sheriff Attorney Asst. Judges High Bailiff

Maine	New Hampshire	New Jersey	Tennessee
Governor Senators Representatives Clerk County Court Register of Wills Register of Deeds Sheriff Attorney County Comrs. County Treasurer Probate Judge	Governor Councillors Senators Representatives Register of Probate Register of Deeds Sheriff Solicitor County Comrs. County Treasurer	Governor Senators Representatives County Clerk Surrogate Register of Deeds Sheriff Coroner County Board	Governor Supreme Ct. Judges Circuit Judges Chancery Judges Senators Representatives Clerk County Court Register of Deeds Sheriff Attorney County Treasurer

The somewhat smaller list of elective officers in Massachusetts perhaps explains in part why the official ballot in that state has been from the beginning made up on the "office group" rather than the "party column" plan. Under this arrangement each voter must mark each candidate for whom he wishes to vote, and can not by a single mark be counted as voting for a party ticket. But even in Massachusetts, the number of votes for the less important offices shows a marked reduction from that for the principal offices, indicating that many voters find they have no opinion on the merits of candidates for the minor offices.

On the other hand, with the office group ballot, a larger proportion of voters express their personal preference as between different candidates, instead of voting for party tickets as a whole. A study of the extent of "split ticket" voting in 1904 showed that in states where each candidate had to be separately marked on the ballot, the percentage of split tickets ranged from 11.87 in Rhode Island and 15 in Massa-

chusetts to 31.07 in Minnesota; while in Illinois with the party column ballot there were only 2.55 per cent of split ticket votes.⁷

Recent city charters and laws in the United States have in many cases reduced the number of elective offices, and thus provided a short ballot for city elections. This has been one important feature of commission government for cities, where the elective city officers are only five (sometimes three) commissioners elected at large. But in many of these cities there are also other elective municipal officials, such as members of school boards, municipal judges and (in Illinois) town, park and other local officers.

Some recent mayor and council governments have provided for the election only of the mayor, one alderman at a time from each ward, and the school board and municipal judges. In Boston, Massachusetts, where all judges are appointed, the charter of 1909 provides for a mayor elected for four years, nine councilmen elected three each year, and a school board of five of which one or two are elected at a time—making only from four to six places to be filled at each annual city election.

Further, it may be noted that in the national government of the United States a short ballot system is established by the constitution. The only elective officers are the President, Vice President, and members of Congress; and the constitution further definitely provides that other offices shall be filled by appointment, and prevents any addition to the number of national officers to be chosen by popular election, and any appointment of officers by Congress.

It is true that in the formal process of electing the President and Vice President, as it has been worked out by the several states, the presidential electors are voted for directly; and that in many of the states these make a considerable addition to the length of the ballot. But it seems clear that in voting for presidential electors, the voters cast a vote for the party lists because their intent is to vote for the candidates for President and Vice President, and very seldom distinguish between the candidates for electors on the same ticket. And any state may provide, as some have done, that the presidential electors on each party list may be voted for by a single mark. While the number of elective officers for any one class of offices may not be very large, the total of national, state and local officers elected at one election makes a long ballot.

The Ballot in Other Countries. No other country has anything like the number of elective offices as the United States; and the ballot in all these countries is much shorter and simpler than in this country. In practically all these countries, the only elective officials are the members of representative bodies; and all executive and judicial officers are appointed.

⁷ P. I. Allen: *Ballot Laws and Their Working*, *Political Science Quarterly*, Vol. 21, pp. 38, 48, (1906).

In Great Britain members of the House of Commons are for the most part now elected by single member districts. In a few cases there are two members from one constituency. Elections for the House of Commons take place at a different time from other elections: and the ballot usually contains only the names of two or perhaps three candidates for the single position. Even where there are two members to be elected, the ballot will seldom contain more than five or six names.

In local elections also, members of county, town and other local councils are also usually elected one at a time from each district; and each body is elected at a different time. In consequence, the ballots at each election usually have but two or three names.

"The mechanism by which the British voter controls his city government is a ballot about the size of a post card. There are two names, or three, on it; the voter selects one. To make up his mind on that simple choice is the whole work of the voter in the campaign and on election day."⁸

So, too, in France, members of the Chamber of Deputies have been elected by single member districts; and even with a considerable number of parties presenting candidates, the ballot has seldom contained more than five or six names. In the smaller cities, however, members of the local councils are elected at large; and in these cases the ballots are longer. For the chamber of deputies the recent introduction of proportional representation in France will make some change.

In some European countries where systems of proportional representation have been introduced, several members of representative bodies are elected by each district; and in these cases, the ballot is somewhat longer, especially where there are candidates from a number of political parties. But even in such cases, the ballot is smaller and less complex than in most American elections. Even with five or six members to be elected from a district and with candidates from as many as half a dozen parties, there is not likely to be more than a dozen candidates.

⁸ R. S. Childs; *Short Ballot Principles* p. 94.

IV. CRITICISM OF THE LONG BALLOT.

Many criticisms have been made of the great number of elective offices and the length and complexity of the ballot in the United States. Even at the time when the prevailing tendency was strongly in favor of popular election of all public officials, some voices were raised in opposition. In the New York Constitutional Convention of 1846, Mr. Simmons said:

"There seems to be a wonderful charm in adding names to the ticket. The complaint in his county was that there were so many elective officers—because it imposed on the people so much labor. He heard a gentleman from Clinton County say—and he lived among a very intelligent population too—that there were so many names on the town ticket now, that he would pledge \$100 that he could get his horse elected supervisor, and nobody would know of it."⁹

In the Illinois Constitutional Convention of 1870, Mr. Hanna of the Tenth District (Wayne and Hamilton Counties), in discussing the system of township organization said:

"There ought to be just as few officers as the people can get along with. This state is as badly cursed with too many officers as by any other curse attached to it. In the county I have the honor of representing this system of township organization has made about 165 new offices. The result is that nobody cares about the business he is expected to perform."¹⁰

About the same time the following criticism appeared in the *North American Review*:

"The folly of obliging the people to decide at the polls upon the fitness for office of a great number of persons is at the bottom of almost all the misgovernment from which we suffer, not only in the cities but in the states. It is a darling device of the political jobbers and a most successful one; for, under the hollow pretence that thus the people have greater power, they are able to crush public spirit, to disgust decent and conscientious citizens with politics, to arrange their "slates", to mix the rascals judiciously with a few honest men wherever public sentiment imperatively demands that much, and to force their stacked cards upon the people."¹¹

A few years later (in 1879) Albert Stickney expounded the doctrine of the short ballot in his *True Republic*; and similar views have been presented, among others, by F. W. Dallinger (now Chair-

⁹ Croswell & Sutton's *Debates of the New York Constitutional Convention of 1846*, p. 390.

¹⁰ *Debates and Proceedings*, p. 876.

¹¹ Charles Nordhoff, *No. Amer. Rev.* Vol. 113, p. 327 (1870)

man of the Elections Committee in the House of Representatives), in his book on *Nominations for Public Office*, and by Charles E. Merriam, in his work on *Primary Elections*.

The extension of the system of popular election was made as part of the democratizing movement, in the belief that it would increase and strengthen the popular control of the government. But it has been urged that it has in fact the contrary effect; and that to the extent now used it is one of the most serious obstacles to popular control of the government.

It is pointed out that with the long list of elective officers and the longer list of candidates an impossible task is placed on the voter. This is not due merely to the limitations of ignorant and uneducated voters; but even the most intelligent and educated voter finds it impossible to learn for himself the qualifications and merits of the numerous candidates, unless by giving more time to such questions than can be expected of any but those who make a business of politics. To examine even briefly the relative merits of two or three sets of candidates for 40 or 50 offices to be voted for at the same time, at the rate of half an hour for each, would require the working time of one or two weeks before each election.

As a result, it is claimed that for the great majority of voters, the act of voting has become unintelligent and mechanical; and that the real control over election results is exercised by political organizations of various kinds. The party column and other devices by which the physical labor of voting for a party ticket is reduced to a minimum enables a large number of voters to decide on the basis of their general preference as between parties; but such straight ticket voters in effect abandon to the party the political privilege which the law has given them.

Even voters who endeavor to discriminate between different candidates can make no careful study of all the candidates, and are likely to be guided in large part by the recommendations of voter's leagues, or temporary organizations supporting particular candidates.

Under these conditions, it is said that public officers are not infrequently elected who fail to represent public opinion; and that officers so elected are in no effective way responsible for the conduct of their offices.

"The task of the voter to obtain sufficient information about candidates long ago passed beyond what even the very intelligent citizen could fulfill, and still maintain his place in competitive industry. The result is that the voter, though extremely intelligent in general, comes to the polls in utter ignorance of candidates and their qualifications for office. * * *

"The elector, by being required to vote too much, has been compelled to surrender to a large extent his right to vote at all, and to permit others to cast his vote as they see fit. Formerly people were disfranchised when they were given no opportunity to vote. Today they are disfranchised by being required to vote too much".¹²

¹² A. M. Kales: *Unpopular Government*, Pt. I, Ch. 2.

The difficulties and objections arising from the large blanket ballot in Illinois are more serious in Chicago and Cook County than in other parts of Illinois, on account of the greater complexity of local government and the larger number of elective offices in the metropolitan community. But even in other parts of the state, the problem of intelligent voting at the November elections is puzzling for the ablest voter. Outside of Chicago, the difficulties caused by the number of separate local elections are greater than in Chicago, where some local elections have been abolished or consolidated with others.

It has been further pointed out that even with the large number of elective offices, there is now a larger number of appointive positions; that many of the appointive offices are of equal or greater importance than some of the elective offices; and that there is no sufficient reason for electing the latter rather than the former, especially as the work of the appointive officers is at least as well done, and often better, than that of the elective officers. The work of the National Government, where only the President, Vice President and members of Congress are elected, is recognized to be more efficiently done and to be more under popular control, than are the state and local governments with numerous elective officers. And in recent years, the betterment of municipal government has been closely connected with the use of the short ballot and the introduction of more responsible systems of organization.

V. THE SHORT BALLOT MOVEMENT.

Short Ballot Principles. To meet these difficulties and criticisms there has developed in recent years an active demand for a "short ballot", based on the following principles:

(1) That only those offices should be elective which are important enough to attract (and deserve) public attention;

(2) That very few offices should be filled by election at one time, so as to permit adequate and unconfused public examination of the candidates.

It may also be pointed out that the important offices which receive public attention are also the offices determining public policies which should reflect the will of the people. In the case of the great number of policy executing offices, the general public is primarily concerned only in efficient administration; and is not able to pass judgment on the technical qualifications of candidates for particular positions or their comparative degrees of efficiency.

Indorsement of Principles. These short ballot principles have been publicly indorsed and supported by some of the most prominent men in American public life, in different political parties—including all of the three latest Presidents of the United States (Roosevelt, Taft, and Wilson), also former Governor and Justice Hughes, and ex-Senator Elihu Root. The following quotations set forth their views:

Governor Hughes of New York in his annual message of 1910 said:

"There should be a reduction in the number of elective offices. The ends of democracy will be better attained to the extent that the attention of the voters may be focused upon comparatively few offices, the incumbents of which can be strictly accountable for administration. This will tend to promote efficiency in public office by increasing the effectiveness of the voter and by diminishing the opportunities of political manipulators who take advantage of the multiplicity of elective officers to perfect their schemes at the public expense. I am in favor of as few elective offices as may be consistent with proper accountability to the people, and a short ballot. * * * It would be an improvement, I believe, in state administration if the executive responsibility was centered in the governor, who should appoint a cabinet of administrative heads accountable to him and charged with the duties now imposed upon elected state officers."¹³

¹³ Proceedings, American Political Science Association, VI, 96 (1909).

Woodrow Wilson has strongly advocated the short ballot, both in his earlier writings and since he has occupied public office. In an article published in 1910 he wrote:

"The elective items on every voter's programme of duty have become too numerous to be dealt with separately and are, consequently, dealt with in the mass and by a new system, the system of political machinery against which we futilely cry out. * * *

"The short ballot is the short and open way by which we can return to representative government. It has turned out that the methods of organization which lead to efficiency in government are also the methods which give the people control."¹⁴

Theodore Roosevelt, in his well known address before the Ohio Constitutional Convention, in February, 1912, said:

"I believe in the short ballot. You can not get good service from the public servant if you can not see him, and there is no more effective way of hiding him than by mixing him up with a multitude of others so that they are none of them important enough to catch the eye of the average workaday citizen. * * * The professional politician and the professional lobbyist thrives most rankly under a system which provides a multitude of elective officers of such divided responsibility and of such obscurity that the public knows, and can know, but little as to their duties and the way they perform them. The people have nothing whatever to fear from giving any public servant power so long as they retain their own power to hold him accountable for his use of the power they have delegated to him. You will get best service where you elect only a few men, and where each man has his definite duties and responsibilities, and is obliged to work in the open, so that the people know who he is and what he is doing, and have the information that will enable them to hold him to account for his stewardship."¹⁵

Elihu Root, in an address at Princeton University, said:

"Our ballots are already too complicated. The great blanket sheets with scores of officers and hundreds of names to be marked are quite beyond the intelligent action in detail of nine men out of ten.

"The most thoughtful reformers are already urging that the voter's task be made more simple by giving him fewer things to consider and act upon at the same time.

"This is the substance of what is called the short ballot reform; and it is right, for the more questions divided public attention the fewer questions the voters really decide for themselves on their own judgment and the greater the power of the professional politician."¹⁶

Ex-President William H. Taft has said:

"I have the fullest sympathy with every reform in government and election machinery, which will facilitate the expression of the

¹⁴ Hide and Seek Politics, North American Review, May, 1910. See also address on Civic Problems, at St. Louis, March 9, 1909.

¹⁵ T. Roosevelt, Progressive Principle p. 63 (1913).

¹⁶ Elihu Root on Experiments in Government, Addresses on Government and Citizenship, p. 96.

popular will, such as the short ballot and the reduction of elective offices."

State Governors. Many state governors have advocated the centralization of responsibility and the short ballot, with special reference to state executive offices. As early as 1872, Governor Hoffman of New York urged that:

"The governor ought to be held responsible for every branch of the actual administration of the state affairs. Under our present constitution, all the important departments are separated from his control. * * * In order that responsibility may be full, direct and unmistakably fixed, and that the people may always know who is to blame for any maladministration, all the heads of administrative departments should be subject to the supervision and correcting power of the governor."

Similar views were presented by Governor Cleveland (1883-4) of New York; and Governor William E. Russell of Massachusetts in 1892 pointed out that the governor in that state had no effective control over the state administration. In 1904 Governors Bates of Massachusetts and Garvin of Rhode Island favored fixing responsibility on the governor by giving him the power of appointing the principal heads of departments.

During the last decade the state governors have taken up this question more actively, and in their messages to the legislatures and the annual conferences of governors, the short ballot has been publicly indorsed by the governors of more than three-fourths of the states, including the following:

- Alabama, (Governor McNeal)
- Arkansas, (Governor Brough, 1917)
- California, (Governor Johnson, 1913)
- Colorado, (Governor Ammon, 1913 and 1915)
- Idaho, (Governor Alexander, 1915; Davis, 1919)
- Illinois, (Governor Dunne, 1913 and 1915; Lowden, 1917 and 1919)
- Indiana, (Governor Goodrich, 1919)
- Iowa, (Governor Clarke, 1913 and 1915)
- Kansas, (Governor Capper, 1915 and 1917)
- Massachusetts, (Governors Walsh and McCall, 1915)
- Michigan, (Governor Ferris, 1913 and 1915)
- Minnesota, (Governor Burnquist, 1915 and 1919)
- Nebraska, (Governor Morehead, 1913; Neville, 1917)
- Nevada, (Governor Boyle, 1915 and 1919)
- New Hampshire, (Governor Keyes, 1917)
- New Jersey, (Governor Fielder, 1915)
- New York, (Governor Sulzer, 1913 and 1915; Smith, 1919)
- North Carolina, (Governor Craig, 1915; Bickett, 1917 and 1919)
- North Dakota, (Governor Hanna, 1913 and 1915; Frazier, 1919)

Ohio, (Governor Cox, 1913 and 1915)
 Oklahoma, (Governor Williams, 1915)
 Oregon, (Governor Wythecombe, 1915)
 South Dakota, (Governor Norbeck, 1917)
 Tennessee, (Governor Rye, 1915)
 Vermont, (Governor Clement, 1919)
 Washington, (Governor Lister, 1913 and 1915)
 West Virginia, (Governor Hatfield, 1915)
 Wisconsin, (Governor McGovern, 1915; Phillip, 1917)
 Wyoming, (Governor Carey, 1913).

Governor Dunne, in his message to the Illinois General Assembly in 1913, stated:

"Some effort should be made to shorten the ballot of the elector.

"It has become so cumbersome and heavily loaded with names of candidates, particularly in the large cities, that even the most enlightened citizen is incapable of exercising an intelligent selection in the choice of some candidates. * * *

"At final elections the only way of shortening the ballot is to cut down the number of elective offices.

"This can safely be done in many cases. Many public corporate bodies are now too large and unwieldy, and the individual members, by reason thereof, are less individually responsible to the people.

"I respectfully intrust to your favorable consideration the subject matter of shortening the ballot to be voted upon by the people, both at primary and final elections.

"All judicial officers should be voted for at a time when no state, county, city or village officers are being elected. This in itself would shorten the ballot as voted under present conditions."

At the Governors' Conference of 1916, Governor Dunne said:

"I am in hearty accord with the views of every gentlemen who has been heard on this matter, to the effect that the attorney general, the adjutant general, treasurer and auditor, who are simply administrative officers, ought to be appointed by the governor, who is charged with the responsibility of the management of the affairs of the state; and that a system which permits these officers to be elected in contra-distinction to the right of the governor to appoint them is a mistake and a failure, and has so operated in the state of Illinois, as well as in other states."¹⁷

Governor Lowden, in his message of 1917, stated:

"Students of our government have gradually come to the view that we must have fewer elective offices if democracy is to be made workable and efficiency attained. Diffusion of power does not safeguard against official abuse, as was once thought, but only disguises it. Responsibility must be concentrated so that the people may know who is to blame if that responsibility is not met, but the short ballot is impossible under our present constitution.

¹⁷ Proceedings of the Governor's Conference, 1916, p. 77.

"And let it be remembered that the short ballot is not an innovation. It is but a return to the form of the federal constitution, and that constitution reposes all of the executive power in a single individual and provides, on the executive side of the government, only for the election of a president and a vice-president. The need for this reform was never so great as it is under our present primary election laws. The people will not take time to consider the qualification of the vast number of candidates upon whom they are now compelled to pass. Their minds are centered upon a few officials, and they ought to have the right when they have selected these officials, to hold them responsible for the administration of their affairs. Therefore I strongly urge prompt adoption by the general assembly of a resolution calling a constitutional convention."

Short Ballot Proposals. More definite and formal proposals and plans for the reorganization of state government, based on short ballot principles, have been presented in recent years in a considerable number of states. In some states significant changes have been already accomplished.

Beginning with New Jersey in 1912, special commissions, committees or other agencies have been set up in a dozen or more states to make a systematic study of state administration and to recommend plans for more efficient and economical management of state affairs. The general policy favored in all these cases has been a reorganization and consolidation of state offices and boards, into a correlated system, under the direction of the governor. In a number of cases, as in the report of the Illinois Efficiency and Economy Committee, and the Minnesota Commission, the detailed recommendations have been limited to changes which could be made by statute; and have not covered the elective state officers established by the state constitution. But even in these cases the underlying principles of the plans proposed affect the elective officers; and complete reorganization will involve the short ballot.

In several cases, however, the plans submitted have definitely recommended a reduction in the number of elective offices. The report of the Iowa committee on retrenchment and reform, in 1914, proposed to organize three main divisions of state administration, which should absorb the statutory functions of the elective constitutional state officers—the Secretary of State, the State Treasurer and the Auditor—with the purpose of ultimately abolishing these offices by constitutional amendment and transferring their remaining functions to the three main divisions. This policy, the committee stated, would "not only concentrate authority in the governor—as the appointing power", and eliminate "the division of authority now prevailing, but would shorten a badly encumbered ballot, thus making for simplified government."

In Oregon a comprehensive scheme for the reorganization of state government has been formulated and discussed since 1909. Un-

der this plan it is proposed, besides fundamental changes in legislative organization, to abandon the direct election of executive officers, except the governor and auditor. The governor would appoint the principal department heads, and also a State Business Manager. Parts of this plan have been submitted to popular vote, by initiative petition, at several elections; but as yet it has not been adopted.

A constitutional commission appointed in New York in 1872 recommended an amendment for the appointment of the Secretary of State, Attorney General and State Engineer in that State. In the proposed revised constitution for the state of New York, submitted by the constitutional convention in 1915, provision was made for consolidating the state administration into 17 civil departments, the heads of which were to be appointed by the governor, except the Attorney General and Comptroller. This would have shortened the ballot in that state by eliminating the elective offices of Secretary of State, Treasurer and State Engineer. This plan was approved in the Convention by a vote of 125 to 30 (Republicans 97 to 15, Democrats 28 to 15). But the new constitution as a whole was not ratified by popular vote.

A survey of state and local government in Delaware, presented to the legislature by Governor Townsend in 1919, reports plans for short ballot state and county governments.

In Illinois the short ballot principle has received a broad popular indorsement in the vote on a public policy question presented in 1912, asking for the appointment of a commission to present definite plans for establishing the short ballot in this state. This question received an affirmative vote of 508,780 to 165,270 against.

Arguments against the Short Ballot. In the New York Constitutional Convention of 1915, the short ballot proposal was supported among others by Elihu Root, President of the Convention; F. C. Tanner, Chairman of the Republican State Committee; H. L. Stimson, former Secretary of War; Seth Low, former Mayor of New York City; G. W. Wickersham, former Attorney General of the United States; R. F. Wagner, Democratic leader; and A. E. Smith, now Governor of New York State. The leading opponents were W. S. Ostrander, L. E. Quigg, State Senator E. T. Brackett and Excise Commissioner George E. Green.

From the addresses in the New York Convention, the arguments against the short ballot may be summarized as follows: To reduce the number of elective offices will be undemocratic and deprive the people of self government; to add to the appointive power of the governor will mean a dangerous increase of political patronage and control over the government; and this movement is a revival of the old system of autocratic rule and a step toward absolute government. It was urged that the general criticisms of the long ballot were due to the introduction of the direct primary and the recently established

"office group" ballot, and that the party column ballot with the single mark for a party ticket provided a short ballot for those who wished it. It was further said that the phrase "short ballot" was misunderstood; that many people supposed it meant merely the physical size of the ballot paper, and that when it was explained that it meant reducing the number of elective offices the people were opposed to it.

In reply to these arguments, those in favor of the proposals before the convention presented the criticisms previously noted of the long ballot system, and the need for a more systematic and responsible government. During this debate, Mr. Root in support of the proposed provisions made his now well known address on "Invisible Government", from which the following quotations may be made:

"What is the government of this State? What has it been during the forty years of my acquaintance with it? The government of the constitution? Oh, no; not half the time, or half way. When I asked what did the people find wrong in our state government, my mind goes back to those periodic fits of public rage in which the people rouse up and tear down the political leader, first of one party and then of the other party. It goes on to the public feeling of resentment against the control of party organizations, of both parties and of all parties. Now, I treat this subject in my own mind not as a personal question to any man. I am talking about the system.
* * *

"They call the system—I don't coin the phrase, I adopt it because it carries its own meaning—the system they call "invisible government."
* * *

"The ruler of the State during the greater part of the forty years of my acquaintance with the State government has not been any man authorized by the Constitution or by the law, and, sir, there is throughout the length and width of this State a deep and sullen and long-continued resentment at being governed thus by men not of the people's choosing. The party leader is elected by no one, accountable to no one, bound by no oath of office, removable by no one. Ah! My friends here have talked about this bill's creating an autocracy. The word points with admirable facility the very opposite reason for the bill. It is to destroy autocracy and restore power so far as may be to the men elected by the people, accountable to the people, removable by the people.
* * *

"How is it accomplished? How is it done? Mr. Chairman, it is done by the use of patronage, and the patronage that my friends on the other side of this question have been arguing and pleading for in this Convention is the power to continue that invisible government against that authorized by the people.
* * *

"Mr. Chairman, that system finds its opportunity in the division of powers, in a six-headed executive, in which, by the natural workings of human nature there shall be opposition and discord and the playing of one force against the other, and so, when we refuse to make one governor elected by the people the real chief executive, we make inevitable the setting up of a chief executive not selected by

the people, not acting for the people's interest, but for the selfish interest of the few who control the party, whichever party it may be. * * *

"I assert that this perversion of democracy, this robbing democracy of its virility, can be changed as truly as the system under which Walpole governed the commons of England, by bribery, as truly as the atmosphere which made the credit mobilier scandal possible in the Congress of the United States and has been blown away by the force of public opinion. We can not change it in a moment, but we can do our share. We can take this one step towards, not robbing the people of their part in government, but toward robbing an irresponsible autocracy of its indefensible and unjust and undemocratic control of government, and restoring it to the people to be exercised by the men of their choice and their control."¹⁸

Results Attained. In several states changes have recently been adopted which shorten the ballot at elections. In Pennsylvania, at each quadrennial state election each elector may vote for governor, lieutenant governor and three other state officers, for a United States senator and a representative in Congress, and for a state senator and representative in the general assembly—a total of nine. Two years later are elections for presidential electors, and members of Congress and state legislature. By amendment to the state constitution adopted in 1909, county and municipal officers and district judges are elected in November of the odd-numbered years, and these elections are thus separated from the state and congressional elections.

Ohio has recently removed from the list of elective state officials the Public Works Commissioner, the Dairy and Food Commissioner, and the State Commissioner of Common Schools, replacing the latter by a Superintendent of Public Instruction appointed by the Governor. A proposed constitutional amendment, submitted in 1913, for the appointment of the Secretary of State, Auditor, Treasurer and Attorney General, was defeated. Iowa has ceased to elect the clerk of its Supreme Court. In California the Railroad Commissioners, the State Printer and the clerk of the Supreme Court have been removed from the ballot.

In 1917 the ballot of Nebraska was shortened by eliminating the names of presidential electors. After the election in presidential years the governor is in this state authorized to appoint eight electors of the party that carried the state.

Indiana, in 1919, abolished the elective offices of State geologist and State statistician; and constitutional amendments have been proposed for the appointment of the Superintendent of Public Instruction and the clerks of the Supreme and Appellate Courts.

¹⁸ Elihu Root, in New York Constitutional Convention, 1915.

VI. SPECIFIC PROBLEMS.

While the general principles of the short ballot have been widely indorsed, there is more difficulty in reaching an agreement as to the application of these principles to the government of the state and local districts. If the general policy is approved by the Illinois Constitutional Convention, the discussion and decision as to methods of working out the policy will be one of the most important and serious tasks before the convention. Without attempting to solve these problems, it seems desirable to set forth some of the specific questions which have arisen, and to indicate some of the factors to be considered and solutions which have been suggested.

The application of short ballot principles affects a good many different organs of government, which will be considered in various other pamphlets prepared for the Illinois Constitutional Convention. What will be presented here will be merely a brief summary of the problems connected with these several organs which are directly related to the question of the short ballot.

State Executive Officers. With reference to the executive and administrative officers for the state at large, the governor may be made the only elective state officer, as is the case in Maine, New Hampshire and New Jersey, by providing for the appointment of other state executive officers. In this way the ballot for state officers would be reduced to a minimum of one.

The first exception which inevitably presents itself for consideration is as to the lieutenant governor. It may be assumed that if this office is retained, it will be continued as an elective office. But it may be noted that several states do not have this office; and the question has been raised as to the need for an officer whose main function is to fill a vacancy in another position. It has been pointed out that Vice Presidents of the United States and Lieutenant Governors of the States have usually represented a somewhat different element or point of view from the President and the Governors; and that a change of policy is more likely to arise when the chief executive is succeeded by such an official than if he were succeeded by an officer appointed by himself. The problem to be decided in this matter is as to the need for the separate office of lieutenant governor.

A second exception commonly advocated is as to the State Auditor, or Comptroller as he is called in some states. It is urged that the duties of this officer are primarily to act as a check on the expenditures of the executive officials; and that for this reason it is essential

that he should be independent of the chief executive. In reply it has been pointed out that in the United States National Government the Comptroller of the Treasury and the Auditors are appointed by the President of the United States; and a similar arrangement is provided in some cities, as in Chicago. The accounting and auditing work in the national government and in these cities appears to be as efficiently performed as in states and cities with elective auditors.

A method of securing the independence of the Auditor from the Governor without direct election is that followed in New Jersey and Tennessee, where this officer is not elected by popular vote, but is chosen by the legislature. This arrangement is based on the view that his primary function is to act as agent of the legislature to insure that expenditures by the executive are kept within the provisions of the appropriations. But it may be questioned whether this now represents the most important duties of this office.

If the auditor is to remain a popularly elected officer, the suggestion may be made that, in order to insure his independence of the governor, he be not elected at the same time as the governor, but perhaps at the intervening biennial election. If the auditing function is to be a check on the executive departments, it will probably also be suggested that the auditor have no other function than that of exercising such a check. Under the present system in Illinois the auditor is responsible for the audit of his own expenses with respect to the supervision of banks.

It may further be noted that in most American governments one result of placing the control over disbursements in the hands of an official theoretically independent of the executive has been that there is in fact no real independent examination of the accounts and financial reports. The State Auditor is supposed to be both accountant and auditor. The experience of European governments indicates that the accounting system and the detailed control over disbursements may well be carried on by a branch of the executive administration, provided there is a subsequent audit of the accounts by an independent agency. In Great Britain, this current check on disbursements is performed by the Treasury; while the work of the Comptroller and Auditor General is to make a critical study of the completed financial accounts, methods and reports at the end of the fiscal year. In Illinois, the main control over disbursements of officers appointed by the Governor was for many years exercised by the Governor's auditor, and is now vested in the department of finance, established by the civil administrative code in 1917.

In New York the question of the election or appointment of the Attorney-General has been given special attention. This question was discussed in the New York Constitutional Convention of 1867; and a provision for the appointment of the Attorney General was barely defeated by a vote of 54 to 56. The New York constitutional commission of 1872 recommended the appointment of the Attorney General.¹⁹

¹⁹ Lincoln: Constitutional History of New York, Vol. II.

The question was again discussed in the constitutional convention of 1915. It was urged on the one hand that as legal adviser to the governor and as the officer in charge of proceedings to enforce the law, it was especially important that he should work in harmony with the governor whose duty it is to execute the law. It was pointed out that when an attorney general had been elected of another political party than the governor, special counsel had been provided for the governor. On the other hand, it was argued that the attorney general's functions as prosecutor (especially in the case of other public officials) was political in nature; but it is not clear why this function should be independent of the Governor, whose duty it is to see that the laws are executed. Though not openly set forth, there was also some opposition on account of the recollection of the situation at the time of Governor Sulzer's impeachment trial, when the attorney general had advised the other state officers to recognize the lieutenant governor as acting governor.

President Taft spoke before the convention committee in favor of the appointment of the attorney general as follows:

"Well, if you are going to have a lot of independent officers, who are running their own boats, paddling their own canoes, without respect to the head of the state, then of course you want a judicial officer to decide between them. But if you are running a government on the basis of a head man being responsible for what is done, and for the work being done in most effective way, then what you want is a counsel. When you consult a lawyer, you don't consult a judge. You consult a man who is with you, seeking to help you carry out the lawful purposes that you have. Therefore he ought to be your appointee. You select him. Now the chief executive is given an attorney general to advise and represent him in all legal matters. I don't see why he shouldn't be appointed. It would be most awkward if he was not, in Washington, I can tell you that."²⁰

The proposed constitution submitted by the New York convention of 1915 continued the attorney general as an elective officer, although making appointive some of the other officers formerly elected. On the other hand it may be noted that in the Pennsylvania convention of 1872, a motion to make the attorney general elective was defeated, without discussion.²¹

The situation in Illinois is affected by the decision of the Supreme Court that the attorney general is the chief law officer of the state, and that appropriations to other officers and boards for legal services and attorneys' fees are invalid.²² Under this decision, all legal advice and services in prosecuting offenders for all branches of the state administration must be performed through the attorney general's office. An elected attorney general not in harmony with the governor could in Illinois seriously affect the administration of laws relating to the officials appointed by and responsible to the governor.

²⁰ New York Constitutional Convention documents No. 11 (1915).

²¹ Debates of the Constitutional Convention of Pennsylvania, 1872, II, 350-351.

²² *Fergus v. Russel*, 270 Ill. 304, 343 (1915).

Election of Judges. Assuming that the elective system will be retained for judges in Illinois, separate judicial elections are important, both as a means of keeping down the length of the ballot and to reduce the influence of partisan factors in these elections. For judges of the Supreme Court elected by districts, and Circuit judges (outside of Cook County), the total number to be voted for in each district at a separate judicial election is not excessive. Indeed the election of other judges now chosen at general elections might well be transferred to the time of the judicial elections in June.

In Cook County, however, the number of judges is so large that the judicial elections alone involve a long and cumbersome ballot. There are now 40 circuit and superior court judges for Cook County, and if the election of municipal court judges were transferred to the same election, there would be 70 to elect. To meet conditions of this sort a plan has been proposed by the American Judicature Society for the election of a chief justice for a comparatively short term, who shall appoint the other judges for longer terms, so that not more than one-half of the judges should be appointed within one term of the chief justice. Under such an arrangement the judges would continue to be chosen independently of the other organs of government; while the voters would be relieved of the impossible task of electing 70 judges from several hundred candidates.

It will not be advisable definitely to prescribe this or any other system in the state constitution; but it may be made possible to deal by legislation with the detailed organization of the judiciary in the special conditions of a metropolitan community, subject to a local referendum. And to meet conditions which may arise later in other urban centers, the organization of courts inferior to the supreme court may properly be left to the general assembly.

It may be noted that the appointive system is still in use for all judges of the United States courts and for judges in Massachusetts, New Jersey and a number of other states, mostly on the Atlantic seaboard. But separate judicial elections appear to meet the requirements of the short ballot for the most part in Illinois, outside of Chicago and Cook County.

There is, however, much less reason for the election of court clerks and bailiffs, whose duties are purely administrative and ministerial. Such officers may well be made appointive and eliminated from the ballot.

County Officers. The problem of dealing with county officers in accordance with a short ballot program is one of no little complexity. One difficulty in reducing the number of elective officers is that no one of the county officers is distinctly recognized as the chief officer of the county in whom the power of appointing other officers could be vested. Various possibilities might be suggested as to providing a chief county officer; but it is doubtful if any definite

scheme should be permanently established in the constitution. It may rather be left to be developed by statutory legislation, under arrangements for local option. For it must be recognized that, at least outside of urban communities, there will be a strong demand for the retention of a number of elective county officers.

If, however, the way is to be left open for an effective short ballot, the present constitutional provisions requiring the election of many county officers at the same time that other officers are elected will have to be eliminated. The constitution should at least make it possible for the legislature to modify the present system, subject perhaps to approval by the counties. And attention may also be given to the advisability of a provision for county home rule, under which any county would be enabled to adopt its own system of county organization.

Other local districts. The elective officers for cities, towns and other local districts are established by statutory legislation. It is not advisable to undertake to establish a stereotyped system for these various districts in the constitution. The problem of local organization should be left to be met by legislation or under a system of local home rule. But it is advisable to eliminate from the constitution provisions which encourage and almost force the creation of special districts, the multiplication of local elective offices and the increase in the number of elections.

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CONSTITUTIONAL CONVENTION

BULLETIN No. 6

Municipal Home Rule



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I. SUMMARY.

The State and Municipal Government in Illinois: At the basis of the legal relations between the state and municipal government in Illinois is the principle of legislative supremacy, except as modified by provisions in the state constitution. Under the first state constitution which contained no definite restrictions, this doctrine was expressed in judicial opinions in sweeping terms; and while later opinions have recognized the limitations in the second and third constitutions, the general principles of legislative control, except as specifically limited, have been restated.

Until 1870 municipal government in Illinois was regulated for the most part by special laws for particular towns and cities. A general law for incorporated towns was enacted in 1831, but special legislation continued for many towns as well as for all cities. Up to 1848 the total amount of this legislation was not large; but with the rapid development of the state after that date, it increased rapidly; and from 1857 on, there was a flood of special and private laws. In 1869 there were four volumes of such laws, with a total of 3,350 pages, of which 1,850 pages related to cities, towns and schools. The result was a bewildering chaos of legislation, with no semblance of policy or responsibility.

A few provisions in the Constitution of 1848 had placed some restrictions on the General Assembly, mainly in reference to counties and taxation for corporate purposes; but these had practically no effect on the legislation for cities and towns. In the Constitution of 1870 a sweeping prohibition on special legislation for cities, towns and villages was adopted, also a constitutional limitation on municipal debt, and provisions relating to special assessments and requiring local consent for street railways. These restricted the power of the General Assembly over municipalities, but there was no positive grant to cities of municipal home rule.

Beginning with the optional law of 1872 for the incorporation of cities and villages, legislation on municipal government in Illinois has been general in form. The number of separate acts and the volume of such legislation has increased steadily, and now forms a total of probably 500 pages in the most generally used edition of the Statutes. This legislation also lacks systematic arrangement, and presents a confusing mass of detailed provisions badly in need of orderly codification and simplification.

To some extent variations in the laws relating to municipal government have been secured by the passage of optional laws, by the classification of municipalities, and by provisions for special districts. Optional laws, adoptive by popular vote, have been upheld

by the Supreme Court. Classification has also been recognized to some extent; but while not carried so far as in some other states, no one definite system of classification has been put in force. Laws for special districts have multiplied the number of overlapping local authorities and added much to the complexity of local government in Illinois.

In addition to special arrangement secured in these ways, an amendment to the Constitution adopted in 1904 has authorized special legislation for Chicago subject to a local referendum. Some laws have been adopted under this provision; but a comprehensive charter framed by a local convention, but modified by the General Assembly (in 1907), was defeated at the local referendum.

Section 4 of Article XI, requiring the consent of the local authorities for street railways in cities, as first construed by the Supreme Court, appeared to give cities a large measure of control over such utilities. But in later decisions it has been held that this is subject to the paramount police power of the legislature in all matters that affect the public safety, welfare, comfort and convenience.

Under present conditions, local communities in Illinois are protected from arbitrary legislative interference; but there is a demand for a larger degree of municipal home rule.

Status of Municipalities in Other States. The prevailing rule in American States, as to the basic legal relations between the state and municipalities is the same as in Illinois. Municipal corporations are created by the state, derive all their powers from the state, and are subject to the control of the state legislature, except as limited by the state constitution. Under the earlier state constitutions, with few restrictions of any sort on the legislature, the power of the legislature over local governments was practically unlimited. But in later constitutions and amendments provisions have been adopted restricting legislative control and also restricting municipalities.

Most state constitutions now contain provisions relating to counties and county officers. Massachusetts in 1821 required a local referendum on the formation of cities; and beginning with New York in 1846 several states have provisions for the local election or appointment of city officers. Beginning with Indiana and Ohio in 1851, special legislation on municipal corporations has been prohibited in thirty states, while several other states impose some restrictions on such special legislation. These provisions have checked legislative interference in local affairs; but by means of the classification of municipalities and the continued practice of detailed legislation, a good deal of what is practically special legislation continues to be enacted.

In a few states other methods have been adopted. In New York special city laws are subject to a suspensive local veto by the

mayor or mayor and council; and in Michigan special acts must be submitted to a local referendum. In a number of states several optional plans of city government have been authorized; but none of these methods gives municipalities full authority to work out their own system of local organization.

Constitutional provisions have also been adopted for the limitation of municipal debts. Beginning with New York in 1846 the legislatures in a number of states are definitely required to limit the taxing and borrowing powers of municipalities. Beginning with Indiana and Ohio in 1851, thirty states prohibit municipal aid to private corporations; and several other states have partial limitations. Since about 1870 constitutional limitations on the amount of municipal debt have been adopted in twenty-eight states, South Carolina and Nebraska limiting the aggregate debt of all municipal corporations; and many states have other restrictions. These constitutional restrictions have been criticised as too rigid; and some states have modified them by exempting loans for public utilities. While some control over municipal debts is necessary, it is doubtful if this can be completely regulated by constitutional provisions.

Municipal Home Rule: In a few states legislatures have passed acts authorizing cities to amend their charters or adopt new charters. An Iowa Act of 1858, for this purpose, was referred to in the Illinois Constitutional Convention of 1870. Similar acts have been passed more recently in Louisiana (1896), South Carolina (1899), Mississippi (1900), and in Connecticut and Florida (1915). Such laws have been held constitutional in Iowa and Mississippi; but there are very few cases where action has been taken under them. Similar acts passed in Michigan (1899) and Wisconsin (1911) have been held invalid as an unconstitutional delegation of legislative power; and a less far reaching home rule act passed in New York in 1913 has not been used, owing to distrust as to its validity.

Beginning with Missouri in 1875, thirteen states have adopted constitutional provisions authorizing cities to frame and adopt their own charters of municipal government: California (1879), Washington (1889), Minnesota (1896), Colorado (1902), Oregon (1906), Oklahoma (1907), Michigan (1908), Arizona (1911), Nebraska, Ohio and Texas (1912), and Maryland (1915). In Missouri this power is given only to cities of over 100,000 population, and in Maryland only to Baltimore and the counties of that state. In the other states it applies to all cities (sometimes also to villages), or to all over a minimum population (from 2,000 in Oklahoma to 20,000 in Washington), and in California also to counties.

This power has been freely used in most of these states; and altogether more than 200 cities and villages are now operating

under home rule charters, including fifteen of the thirty largest cities in the country.

In most of the constitutional provisions for municipal home rule, the procedure for charter making is prescribed; but in Michigan and Texas the methods of procedure are defined by statute. The first step may usually be taken either by the local council or a popular petition, with a popular vote on the question of revising the charter. In all the home rule states but Oregon a new charter is prepared by a special charter commission; and such commissions are elected by popular vote, except in Minnesota where they are appointed by the district judges. Proposed charters are in all states submitted to popular ratification. Amendments to charters may be proposed by local councils or popular petition and are submitted to popular ratification.

Most of the earlier home rule provisions do not define the scope of municipal powers; and also provide that the local charters are subject to the constitution and laws of the state. Under these conditions charter provisions in conflict with state laws have been held invalid. Later provisions have included more definite and positive statements of the powers conferred; notably those of Michigan and Ohio, and amendments adopted in California and Colorado. These include a general grant of power as to "municipal concerns" or "local self government", with an enumeration of specified powers.

In most home rule states, the constitutional provisions include some mandatory requirements, and also limitations. In some cases these prescribe certain officials; and in other cases provide for the limitation of taxes and debts and for financial reports.

The proposed New York Constitution of 1915 contained provisions for municipal home rule more complicated and more conservative than in the home rule states; but this constitution was not ratified by the people.

Proposed home rule amendments have been approved by one legislature in New York (1917) and Wisconsin (1919), but must be repassed by a second legislature in these states before submission. In Utah, a proposed home rule amendment, submitted in 1919, will be voted on in 1920.

Proposed constitutional provisions for municipal home rule have been recommended by the Committee on Municipal Program of the National Municipal League. These include a general grant of power, and also some enumerated powers and provisions for legislative control by general laws in matters relating to state affairs.

The problem of municipal home rule is further complicated by overlapping districts; which are probably more numerous in Illinois than in other states. In some states city and county government in large cities has been consolidated; and such consolidation is authorized in the constitutions of several other states.

The constitutional provisions in Michigan and Ohio and those proposed by the National Municipal League offer the best basis for an adequate system of municipal home rule. In most of the

other home rule states there is too much detail as to procedure, and no adequate grant of local powers; those of Oregon and Texas are too brief and vague; and those of California and the proposed New York constitution much too long and complicated.

Comments and Problems: The defects and evils arising from the present methods of legislation on municipal affairs may be summarized as follows:

- (a) The waste of legislative time, and the demoralizing effect on the work of the legislature;
- (b) The lack of adequate power on the part of local communities to deal promptly and effectively with local problems;
- (c) The lack of responsibility for acting on local problems; and

- (d) The voluminous and confused state of the present laws.

In favor of a system of municipal home rule, it is urged that it will:

- (a) Give each community an opportunity to have the kind of local government it wants;
- (b) Develop public interest in local affairs;
- (c) Enable local communities to deal with local problems more promptly;
- (d) Make local government better adapted to local conditions, and more stable for each community;
- (e) Simplify the laws and machinery of local government; and
- (f) Relieve the legislature.

A fundamental objection urged against municipal home rule is that it is inconsistent with the sovereignty of the state, but this is not borne out in practice. Some specific objections are not consistent with each other—as that it will increase the confusion in local government, and yet will make changes more difficult than under present methods. More serious difficulties are, however, raised as to the application of the general principle.

The outline of a possible home rule program is presented on pages 423 to 428, including provisions as to the character and extent of the power to be granted to municipalities, and also suggested limitations and restrictions.

II. THE STATE AND MUNICIPAL GOVERNMENT IN ILLINOIS.

Legislative Authority over Municipalities: At the basis of the legal relations between the State and municipal governments in Illinois is the principle of legislative supremacy, except as modified by provisions in the state constitution. The general principle was expressed by the Supreme Court as early as 1826; and the situation under the first state constitution was more definitely stated in the case of *People v. Wren* (in 1843) as follows:¹

"As the constitution of this state contains no restriction, either express or implied, upon the action of the legislature in such a case, we hold that it has absolute control over municipal corporations, to create, change, modify or destroy them at pleasure * * * * The creation of a municipal corporation depends in no degree upon the assent or dissent of the inhabitants of a particular locality, unless such a condition be contained in the law of its creation."

Under the later state constitutions the plenary power of the legislature has been limited in some respects; and general statements in judicial opinions have recognized such restrictions, which will be noted later. But the main doctrines of legislative control, except as specifically limited, and of strict construction of municipal powers, remain in full force.²

Special Legislation under the First Constitution: During the periods of the first and second constitutions, municipal government in Illinois was regulated for the most part by special laws for particular towns and cities. Before state government, the towns of Kaskaskia and Shawneetown had been incorporated. After 1818 other towns were similarly incorporated by special acts of the legislature. A general act for the incorporation of towns was enacted in 1831; and additional towns were organized under this law, although special acts for towns continued to be passed.

¹ 5 Ill. 269, 275 (1843). But note the dissenting opinion by Justice Wilson that the legislature did not have power to leave a part of the state without any county organization whatever. Note also *Coles v. County of Madison*, 1 Ill. 154, 160 (1826), and *Field v. People* 3 Ill. 79, 95 (1839).

² Thus, in the case of *Wilson v. Trustees of the Sanitary District*, 133 Ill. 443, 460 (1890) it is stated that: "The omnipotence of the General Assembly in all matters relating to the authorization of the formation of municipal corporations and investing them with powers of local government, except so far as the restrictions have been placed upon the legislature by the constitution, has been often asserted." Note also, *True v. Davis*, 133 Ill. 522, 531, (1889); *Seeger v. Mueller*, 133 Ill. 86, 94 (1890); *Smith v. McDowell*, 148 Ill. 51, 62 (1893); *Chicago v. M. & M. Hotel Co.* 248 Ill. 264, 269 (1911).

Chicago, which was first organized as a town under the general law, received a special town charter in 1835, and its first city charter in 1837. The latter was framed by a local committee, approved at a mass meeting; and enacted by the legislature with some changes. Nearly a score of amending and supplemental acts relating to Chicago were passed during the next decade.

Seven other places were incorporated as cities before 1847, all by special laws—Alton, Galena, Springfield, Quincy, Nauvoo, Peoria and Metropolis. The Springfield and Quincy charters were nearly identical, and were followed in later charters. Five of these seven city charters were submitted to a local referendum before going into effect; but this practice was not followed in amending and supplemental legislation which soon began to appear.

Limitations in the Constitution of 1848: The Constitution of 1848 contained several provisions relating to municipal and local government. Article VII on Counties restricted the organization of new counties and changes in county boundaries and county seats, and authorized an optional system of township organization. In the Article on the Judiciary, the power of the General Assembly to establish inferior courts was limited by providing for circuit and county courts and specifically authorizing inferior local courts in cities, which should have a uniform organization and jurisdiction. Section 5 of Article IX provided for vesting power of taxation for corporate purposes in the corporate authorities of counties, townships, school districts, cities, towns and villages.

As a result of these provisions, the plenary power of the legislature was limited to a slight extent; but no definite measure of municipal home rule was conferred. Judicial opinions from time to time restated the rule of legislative control, as in the following:

"While private corporations are regarded as contracts which the legislature can not constitutionally impair, as the trustee of public interests, it has the exclusive and unrestrained control over public corporations; and as it may create, so it may modify or destroy, as public exigency requires, or the public interest demands. * * * Their whole capacities, powers and duties are derived from the legislature and subordinate to that power."³

³ *People v. Power*, 25 Ill. 169, 174 (1861); See *County of Richmond v. County of St. Lawrence*, 12 Ill. 1, 7 (1850); *Trustees v. Tatman*, 13 Ill. 27, 30 (1851); *Gutzweiler v. People*, 14 Ill. 142 (1852); *Freeport v. Supervisors*, 41 Ill. 495, 499 (1866); *Trustees of Jacksonville v. McConnel*, 12 Ill. 138 (1850); *Caldwell v. City of Alton*, 33 Ill. 417 (1864); *Chicago v. Rumpff*, 45 Ill. 90, 95 (1867).

A few judicial interpretations of particular provisions of the constitution may be noted: *City of Rockford v. Maynard*, 14 Ill. 419 (1853); *Prettyman v. Supervisors of Tazewell Co.* 19 Ill. 406, 411 (1858); *People v. Mayor, etc. of Chicago*, 51 Ill. 17 (1869).

The most important rulings protecting local communities against the power of the legislature were in two cases decided in 1869, *People v. Mayor etc., of Chicago*, 51 Ill. 17 (1869); *Harward v. St. Clair & M. L. & D. Co.*, 51 Ill. 130, 134 (1869); *Contrast, Shaw v. Dennis*, 10 Ill. 405, 416 (1849).

Special Legislation Under the Second Constitution: From 1848 to 1870, there was a rapid development of towns and cities in Illinois, both in number and population; and as the practice of special legislation continued the number and volume of special laws relating to municipal government increased enormously. At the same time former methods for testing local approval of such measures fell into disuse; and important acts were passed against vigorous local opposition.

The new optional system of township government authorized by the Constitution of 1848 had important results on the government of cities. The townships included any city within their geographical limits; and an overlapping series of township officials was now provided in addition to the city officials in counties which adopted the new system.

One step looking towards more general legislation for cities was an act of February 10, 1849, supplementing the general town law, and providing that any incorporated town of more than 1,500 population might vote to incorporate as a city with all the powers granted in their special charters to the cities of Springfield and Quincy. Some towns became cities under this law (e. g. Bloomington, Belleville and Rockford); but special legislation for such cities was also passed; and most cities were organized and governed entirely under special laws, although in a number of cases the original charters were made up in the main of provisions from the Springfield and Quincy charters.

From time to time general revisions of city charters were passed. A second city charter was enacted for Chicago in 1851, and a third in 1863. General revisions of their charters were passed for about a dozen other cities between 1857 and 1869; and these documents became more and more bulky.

Amending and supplementing laws for the 100 cities and for many of the 300 incorporated towns in the state were still more numerous than new and revised charters.

The total mass of special legislation is indicated in the increasing volume of state laws. In 1857 the private laws formed a volume of 1,550 pages. By 1867, the private laws were published in three volumes of more than 2,500 pages, of which 1,050 related to cities, towns and schools. In 1869 there was a further increase to four volumes of 3,350 pages, of which 1,850 pages related to cities, towns and schools.

Obviously such a flood of statutory enactments could not receive adequate consideration either in the General Assembly as a whole or even in the committees. Most of the bills were doubtless prepared in the localities concerned; and were passed at the request of the local members of the legislature. But, at best, there was little assurance that they represented the views of the local communities; and the frequent changes from session to session apparently reflected the varying opinions of temporary officials and representatives. At times measures were enacted from partisan or other politi-

cal motives, in the face of active local opposition, and in some cases over the veto of the Governor. Moreover, it was impossible for any definite and consistent policy to be followed; and the formal system of detailed legislative control tended to degenerate into a bewildering chaos of statutory provisions with no semblance of responsibility or system.

In the constitutional convention of 1862, a section was adopted prohibiting local or special laws on a list of enumerated subjects. As reported by the committee of the whole, this included laws for the incorporation of cities, towns and villages; but this clause was struck out by the convention. In the proposed constitution special or local laws were prohibited on county and township business; locating and changing county seats, laying out, opening, altering and working on roads and highways, and vacating roads, town plats, streets, alleys and public squares; as well as some other matters.⁴

Another section of the proposed constitution required general laws and prohibited separate acts relating to corporations. These provisions reported by the committee on miscellaneous corporations were substituted for a proposed section proposed by the committee on municipal corporations providing for general laws, uniform in operation, and prohibiting special laws relating to municipal corporations, except cities of over a certain number of inhabitants.⁵

The Constitution of 1870: In the Constitutional Convention of 1869-70, a good deal of attention was given to municipal problems. These were handled by several different committees; and some difficulties arose from the fact that the same and closely related topics were considered by more than one committee, with the result that conflicting reports were presented to the convention.

The committee on the legislative department included in its report a section prohibiting special legislation on an enumerated list of subjects, among which were named laws incorporating or amending the charters of cities or towns. This section was discussed for two days (February 10 and 11); and about half of the time was given to the clause on cities and towns. The debate was discursive and shows little evidence of any systematic study of the situation in Illinois, or in other states.

Mr. Orville H. Browning of Quincy urged that the criticism of special legislation applied to private and not to municipal corporations; but this view received little support. It was stated that the greater portion of special legislation applied to cities and towns. Complaints were made that the Chicago "city ring" could have laws passed (raising salaries, and extending terms of office) against the wish of the public; of the repeal of the charter of Warsaw se-

⁴ Journal of the Convention of 1862, pp. 456, 601, 831, 1080; Proposed Constitution, Art. IV, Sec. 30.

⁵ Journal of the Convention of 1862, pp. 706, 721, 762, 1092; Proposed Constitution Art. IX, Secs. 1-2.

cured by the senator from Hancock County; and of changes in city laws by a few individuals without consulting the inhabitants. Reference was made to the classification of cities, as in Ohio and different opinions were expressed on this, with no clear indication as to the attitude of the convention as a whole. One Chicago member (W. F. Coolbaugh) cited an Iowa law of 1858 authorizing cities to amend their own charters on petition and popular vote, as an illustration of a general law.

Several amendments to the committee report were proposed: to strike out the clause relating to cities and towns, for a local referendum on amendments to existing charters, exempting cities of over 20,000 population and permitting special legislation for cities by a three-fourths vote of all the members of each house. But all of these were defeated, with no record of the votes; and the committee report, with a minor verbal amendment proposed by Mr. Medill of Chicago, was approved, also without a record vote, and appears in Section 22, Article IV of the present constitution.⁶

More time was given to the question of restricting municipal indebtedness, which had increased to a great extent, largely for the purpose of aiding the construction of railroads. The committee on the legislative department reported a section applying to local districts the prohibition on extending public credit to private corporations or subscribing to the stock of such corporations; but this was stricken out in favor of provisions reported by the committee on state, county and municipal indebtedness, limiting the total amount of municipal debt. This proposal met with considerable opposition, and many amendments were offered; but the committee report, with some modifications, was approved in committee of the whole by a vote of 42 to 24, and concurred in by the convention by a vote of 38 to 12. The provisions adopted appear in section 12 of Article IX of the Constitution of 1870.

Later a proposal was adopted to add a section requiring a two-thirds vote to authorize aid to private corporations; but for this there was afterwards substituted a section prohibiting local aid to private corporations, to be submitted to separate vote of the people; and this section was approved by popular vote.⁷

A number of proposals relating to municipal government were referred to the committee on municipal corporations. Among these not included in the committee report were provisions relating to the powers of city mayors, the selection of municipal officials, and the extension of corporate limits. The committee report dealt only with financial questions; and a minority report was presented by Mr. John C. Haines of Cook County.

The main discussion on this report was on the provisions relating to special assessments and special taxation for local improvements. This question had been brought up by the decision of the Supreme Court in the case of *Chicago v. Larned* (1864), holding

⁶ Convention of 1869-70, Debates and Proceedings, I, pp 590-608, 929.

⁷ Debates and Proceedings I, pp. 189, 211, 669, 833, 851, 931, 964, 1104, 1234-1242, 1256, 1260.

that special assessments must be limited to the benefits conferred, and that frontage assessments for the whole expense were invalid. The committee report proposed to authorize special taxation for streets and sidewalks and to prohibit assessments for benefits; but this was amended to authorize local improvements by special assessments or by special taxation or otherwise. The other sections in the committee report were adopted, with minor modifications; and all these provisions appear in Sections 9, 10 and 11 of Article IX of the Constitution of 1870.⁸

Two resolutions were introduced in the convention to require local consent for the grant of street railway rights in cities, towns and villages; and the provisions in Section 4 of Article XI of the constitution were reported by the committee on miscellaneous corporations, and adopted without debate.

During the convention, a provision was approved authorizing any city with a population of 200,000 to be organized into a separate county; but this was later reconsidered and stricken out, at the request of Cook County members.⁹

Other provisions were adopted in the Constitution of 1870 relating to local governmental agencies and affecting the governmental affairs of cities, and are to be found in the Articles on the Judicial Department and on Counties. These will be noted in other pamphlets; but mention may be made here of the clause authorizing the creation of courts for cities and incorporated towns, and the special provisions for courts and a board of county commissioners for Cook County (Secs. 23-28, Art. VI; Sec. 7, Art. X).

The completed constitution of 1870 thus contained a considerable number of provisions relating to municipal government. These are to be found in different articles, and are not altogether harmonious. The primary object appears to have been to impose further restrictions on the power of the General Assembly. A secondary result has been to reduce the control of the legislature over municipalities. But some of the provisions also impose or involve limitations on the local governments; and the new constitution made no positive grant of municipal home rule.

General Legislation: At the session of the General Assembly of 1872 a general act was passed to provide for the incorporation of cities and villages. This law now forms the basis for the government of these municipal corporations in Illinois, though the original act has been greatly amended from time to time, and there has also been a good deal of other legislation relating to municipal government. Even a summary of this legislation is impossible here; but some general characteristics may be noted, with special reference to the question of municipal home rule.

⁸ *Chicago v. Larned*, 34 Ill. 203 (1864); *Debates and Proceedings* I, 154, 390, 1669-1676, 1723-25.

⁹ *Proceedings and Debates*, II, 1521, 1536, 1835-36.

The general incorporation act of 1872 provided for the incorporation of new cities and villages, and for the organization and powers of such cities and villages, and also of existing cities, villages and towns which voted to adopt the law. The law appears to have been drafted with reference to the charter of Chicago, the largest city in the state; and conferred the same powers on all cities and villages which came under its operation. The main powers of the local councils were enumerated in detail in a long section of 96 clauses, covering $7\frac{1}{2}$ pages. A small list of administrative officers were definitely provided, and the local councils were authorized to establish other offices as needed. Financial methods were regulated in some detail; and an article on special assessments provided for the use of this method of financing local improvements, as authorized by the new constitution.

When enacted, this law was probably the best general law on city and village government in the United States. It provided a comparatively simple and somewhat flexible plan of municipal organization; and while following the established practice of enumerated powers, it gave considerable authority to the local councils in working out the details of municipal organization.

But this act did not cover the whole field of the former special city charters or of city problems. It contained nothing on the assessment of property for taxation or the management of schools; and these subjects were from this time dealt with in other laws. At the same session of the General Assembly in 1872 there were passed eight other acts relating to cities and villages,—including acts for the annexation of territory, concerning the appointment and removal of city officers, and authorizing cities and villages to contract for a supply of water for public use.

The new corporation law seemed to commend itself to the local communities in Illinois. It was adopted in 1872 by more than 50 cities and incorporated towns (including Evanston and Moline) and by about 30 new cities and villages; in 1873 there were more than 40 reincorporations and more than 40 new incorporations under the law; and other municipalities were reincorporated and established in succeeding years. Chicago adopted the new law in 1875. With the prohibition on the amendment of special charters, the adoption of the general law offered the only way of securing enlarged powers.

Some cities and towns, however, continued to operate under their former charters for a considerable time. Peoria, for example, did not adopt the general law until 1894, Quincy not until 1895, and Bloomington not until 1897. There are still a few cities and some towns and villages operating under their old special charters; and a number of other places where the special charter provisions relating to schools are still continued.¹⁰

¹⁰ The Supreme Court has held that the provisions of a special charter relating to schools remain in force, notwithstanding the adoption by the city of the general cities and villages act. *Smith v. The People*, 154 Ill. 58, 69 (1894). It has also held that an act repealing the school provisions of a special charter for a particular city, thus bringing the management of schools under the general school law, is not in violation of the prohibition on special legislation. *People v. Crowley*, 274 Ill. 139, 146 (1916).

*Reincorporation and Incorporation under the Cities and Villages Act
of 1872.*

Years	Cities and Towns Reincorporated	Cities and Villages Incorporated	Total
1872-88	177	212	389
1881-90	87	164	251
1891-00	40	190	230
1901-10	22	149	171
1910-17	9	48	57
Total ..	335	763	1098

Cities, Towns and Villages under Special Charters.

Cities:	Population 1910
Abingdon, incorporated 1857	2500
La Harpe " 1859	1349
Lake Forest " 1861	3349
New Boston " 1859	718
Oneida " 1869	589

Incorporated Towns:

Astoria	"	1839	1357
Chatsworth	"	1867	1112
Cicero	"	1867	14525
Golconda	"	1845	1088
Lena	"	1869	1168
Magnolia	"	1859	368
Mason	"	1865	345
New Canton	"	1869	473
Normal	"	1865	4024
Oterville	"	1867	179
Rushville	"	1839	2422
Topeka	"	1869	130
Woodburn	"	1869	175

Villages:

Claremont	"	1866	186
Elvaston	"	1869	250
Glasgow	"	1867	215
Glencoe	"	1869	1899
Winnetka	"	1869	3168

Additional legislation on city government has however been necessary to meet new conditions and new problems; and such legislation has been passed at every regular session and at some special sessions of the General Assembly. This has included amendments to the original act of 1872, other laws relating in terms to cities and villages, and further laws and amendments under other titles relating to municipal affairs. The volume of such legislation has tended to increase, though far short of the bulk of private legislation before 1870. The acts on cities and villages passed in 1872 occupied 56 pages in the session laws. In 1917, there were 32 acts relating specifically to cities and villages, comprising 64 pages in the session laws; and in addition about 40 other acts on municipal matters, covering 115 pages in the session laws.

The total mass of legislation on municipal government is now of extensive bulk and complexity. The main act for the incorporation of cities and villages, with amendments, fills 79 pages in Hurd's Revised Statutes; and other laws relating definitely to cities and villages fill 244 pages more. Including other laws on municipal affairs, probably a total of 500 pages in the Revised Statutes relate to municipal government. This legislation moreover lacks systematic arrangement, and presents a confusing mass of provisions, badly in need of consolidation and orderly arrangement.¹¹

Much of this later legislation has been passed for the purpose of conferring increased powers on the municipal authorities; and the scope of municipal functions has been steadily enlarged. But this has continued to be done by the method of specific enumeration of particular powers; and the tendency has been for the more recent legislation to enter into more and more detail in prescribing methods which limit the scope of municipal action. This tendency towards more detailed legislation has inevitably increased the attempt to secure somewhat different provisions for different municipalities; and has led to the adoption of various devices by means of which different laws, general in form, are applicable to different places, and the evasion to some extent of the prohibition against special legislation.

The principal methods followed to secure variations in the laws for different communities have been: by the passage of optional laws, applicable only in the localities which adopt them; by the classification of municipalities; and by provisions for special districts and authorities distinct from the city or village government. Some of the measures illustrating each of these methods may be noted.

¹¹ The confused state of the laws relating to municipal government was emphasized at the 1919 session of the General Assembly, when more than 60 acts were enacted in order to readjust tax rates to the change in the basis for the assessment of property from one-third to one-half of actual value. Several of these acts, amending different sections of the same previous acts, might have been combined. But, an examination shows the existence of more than 50 different laws relating to local tax rates,—20 relating to city taxes, 20 to park taxes, 4 to sanitary districts, and 5 to county taxes.

Optional Laws: Optional legislation on local government in Illinois began at a comparatively early period. The general act of 1831 for the incorporation of towns was optional; and, as already noted most of the early city charters in Illinois were subject to a local referendum before going into effect. The system of township government, authorized in 1849, was optional for each county in the state. So too the general law of 1872 for the incorporation of cities and villages was applied only in communities which voted to adopt it. In these cases, however, each of the optional laws provided a general plan of local government.

Since the general act of 1872 a number of optional laws have been passed providing for variations in the general plan of municipal government. The city courts act of 1874 (replaced by the act of 1901) authorized cities of over 3,000 population which by popular vote adopted the law, to establish city courts. The city election act of 1885 (replaced by the act of 1899) may be adopted by any city, village or incorporated town. The civil service act of 1895 is adoptive by any city. The fire and police commissioners act of 1903 may be adopted by any city between 7,000 and 100,000 population. The commission government law of 1910 is applicable to cities and villages of not over 200,000 population which vote to adopt it.

Such optional laws adoptive by popular vote have been upheld by the Supreme Court as not in conflict with the constitutional provision against special legislation in cases relating to the cities and villages act of 1872, the city courts act of 1874, the city election law of 1885, and the civil service act of 1895.¹²

On the other hand, the city tax act of 1873 was held to be invalid as special legislation, because while providing for city assessors and collectors, it also authorized city councils by resolution or ordinance to certify city taxes to the county clerk and abolish city assessors and collectors, thus "establishing dissimilarity of powers and modes of different cities in the levy and collection of taxes".¹³

Classification of Municipalities: A good many acts relating to municipal offices in Illinois since the Constitution have not applied to all municipalities but have been limited to those coming within the scope of defining terms named in the act. There has been no one definite classification of municipalities adopted as a basis for such legislation; and there has been much less legislation of this character than in most other states where special legislation is prohibited. But various acts have defined a number of different

¹² *Potwin v. Johnson*, 108 Ill. 70, 79 (1883); *People v. Hoffman*, 116 Ill. 587, 594 (1886); *People v. Kipley*, 171 Ill. 44 (1897); *Chicago Tenn. R. R. Co. v. Greer*, 223 Ill. 104 (1906).

A similar act for a new county had been previously upheld as not an unconstitutional delegation of legislative power. *People v. Reynolds*, 10 Ill. 1, 11 (1848).

¹³ *People v. Cooper*, 83 Ill. 585 (1876).

and overlapping classes of municipalities, some of which have been upheld by the supreme court and some of which have been held to be invalid as substantially special or local legislation.

The cities and villages act of 1872 provided for two classes, cities and villages. New cities were limited to communities of more than 1,000 population; but larger places might continue as villages. In 1874 an act was passed to enable towns and villages, in counties having over 40,000 population, having commons to dispose of the same. Some of the optional laws already noted were limited to municipalities within certain population limits. Two acts were passed in 1887 for firemen's and police pensions in cities with more than 50,000 population. An act of 1897 provided for the examination of plumbers in cities of more than 5,000 population. And many other acts have been passed applying only to cities as classified by population in the acts.

Such acts have been challenged in the courts in a number of cases; and some rules have been laid down as to valid and invalid classification. In an early case an act applying to counties of 100,000 population and limited in duration to six years was held to be invalid, as a special act which could only apply to Cook County.¹⁴

Other cases in which a classification based on population has been held invalid as special or local legislation include: the horseshoers act of 1897, requiring a state license for horseshoeing in all cities and towns of over 50,000, and in cities and towns between 10,000 and 50,000 which adopt the act, but not in other cities and towns; a section in the revenue act of 1898 relating to the debt and taxing powers of municipalities in counties over 125,000 population; acts of 1903 placing cities from 20,000 to 50,000 and from 20,000 to 28,000 in a class, with both larger and smaller cities put together in another class; and a provision in an act of 1903 that in cities over 20,000 *all* road and bridge taxes be paid over to the city.¹⁵

On the other hand, classification based on population has been upheld in several of the cases upholding optional laws, and also in the following: an act of 1881 relating to probate courts in counties over 70,000 population; acts of 1887 and 1899 with different provisions for cities over and under 50,000 population; an act of 1897 for plumbers' examinations in cities over 5,000; and the jury commissioners act of 1903, applying to counties of more than 100,000 population. While the last of these affected only the county of Cook it was said that other counties would soon reach the limit named.¹⁶

Classification of municipalities on other bases than population has been less frequent. In several cases, however, acts applying to incorporated towns, to cities, or to villages and not to similar

¹⁴ Devine v. Commissioners of Cook County, 84 Ill. 590 (1877).

¹⁵ People v. Knopf, 183 Ill. 410 (1900); Bessette v. People, 193 Ill. 334 (1901); L'Hote v. Village of Milford, 212 Ill. 418 (1904); People v. Fox, 247 Ill. 402 (1910).

¹⁶ Knickerbocker v. People, 102 Ill. 218 (1882); Cummings v. Chicago, 144 Ill. 563 (1893); People v. Onahan, 170 Ill. 449 (1897); Bloomington v. Reeves, 177 Ill. 161 (1898); Douglas v. People, 225 Ill. 536 (1907).

municipalities with a different form of organization have been held invalid as an unauthorized discrimination.¹⁷

But, at the same time, an act imposing a liability for mob damages on counties and cities, but not on towns and villages, has been held to be invalid.¹⁸

"The general rule is, that a classification of cities, towns and villages of the State by population, as a basis of legislation may be made if such classification is based upon a rational difference of situation or condition found in the municipalities placed in the different classes, otherwise legislation based upon such classification is invalid."¹⁹

But, a "classification can not be adopted arbitrarily upon a ground which has no foundation or difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and objects to be attained. There must be something in the nature of things which, in some reasonable degree accounts for the division into classes."²⁰ It is difficult, however, to reconcile all of the cases on classification in accordance with this or any other definite rule.²¹

Under the prevailing methods of detailed legislation on municipal government, some arrangement for adjusting statutory details to the varying conditions of different communities appears to be needed. But the schemes of classification thus far established in Illinois, while not so absurd as in some other states, show an absence of any consistent plan or policy. If detailed legislation is to be continued so that classification of municipalities is necessary, it should be possible to devise a simple and definite system, which may be followed in all legislation where classification is to be used. This does not mean, however, that a permanent and rigid classification should be placed in the constitution.

Overlapping Districts: Further complexities and variations in the organization of local government in Illinois have been brought about by the provisions for the creation of special and overlapping districts. Some of these have been in existence for a long time. But in later years the number of different kinds of such districts

¹⁷ *People v. Martin*, 178 Ill. 611 (1899); *People v. Fox*, 247 Ill. 402 (1910); *People v. Campbell*, 285 Ill. 557 (1918).

¹⁸ *Dawson Soap Co., v. Chicago*, 234 Ill. 314 (1908).

¹⁹ *J. Hand in Douglas v. People*, 225 Ill. 536 (1907).

²⁰ *J. Cartwright in People v. Knopf*, 183 Ill. 410 (1900).

²¹ In contrast with the decisions recognizing classification of municipalities, the supreme court has held, under another clause of the same section prohibiting special legislation, that a fish law with different provisions for Lake Michigan and the smaller lakes and rivers was invalid.

"The clause of our constitution * * * was proposed * * * for the express purpose of preventing legislation for the protection of game and fish by laws that should not operate in all the territory subject to the jurisdiction of the state."

People v. Wilcox, 237 Ill. 421 (1908), three judges dissented. But, see *People v. Diekmann*, 285 Ill. 97 (1918), holding that Act of 1915 amending Section 25 of Fish and Game laws and authorizing the selection of certain waters as fish preserves is not invalid as local or special legislation.

has been increased, largely as a means of evading the constitutional limit on local debt, but in part also (by means of optional legislation) as a method of meeting the supposed need for a particular arrangement in certain communities.

Under the general system of local government in Illinois, every part of the state is at the same time within the limits of three local government districts—a county, a township (or road district) and a school district. The school township is technically a district distinct from the civil township; and in a good many places the geographical areas of the two are different. Cities and villages are special districts usually within a county and township, and generally similar in area to a school district; but each of these areas ordinarily retains its identity, and the inhabitant of a city or village thus owes allegiance to at least five local governments, in addition to the State and the Nation.

In most other states, city and town governments are consolidated; in many cases the local school management is also combined with the city government; and in a number of cases city and county government has been more or less united.

Illinois, however, has added still further to the number of separate and overlapping local authorities in many communities by laws for park districts, drainage and sanitary districts, high school districts and public health districts. Three park districts were created in Cook County by special legislation before 1870; and a considerable amount of later legislation has been enacted so framed as to apply to these districts and these alone. Two laws for the creation of park districts were passed in 1893 and 1895; and there has been additional park legislation for cities not over 15,000 population (1899), for cities of less than 50,000 (1907), and for town and township parks (1911).

There are several laws relating to drainage districts for agricultural purposes; and four other optional acts have been passed (in 1899, 1907, 1911 and 1917) for the formation of sanitary districts for the disposal of sewage. Each of these appears to have been prepared with reference to a particular locality. Optional laws for the organization of special high school districts were enacted in 1905 and 1911. In 1917 another optional act was passed for the creation of public health districts.

One factor in the formation of the many types of local districts has been the fact that existing local areas were not always the most suitable for certain purposes. But in a good many cases several such districts cover substantially the same territory; and the principal reason for their formation has been that as each district is a separate municipal corporation, each can borrow up to the constitutional limit on indebtedness; while it has also been easier to secure statutory authority to levy taxes for such new districts than to increase the taxing power of the older authorities.

As a result of these several devices there is a good deal of what is in substance special legislation for certain communities; and the effect of such legislation has been to add much to the complexity

of local government in Illinois, and to increase the number of local elections and elective offices. Under the several laws the same area and population may be at the same time in nine, or possibly more, distinct local government districts: county, township, school township, city or village, school district, high school district, park district, sanitary or drainage district and public health district. The most complex situations are in the East Side Levee district including East St. Louis and neighboring territory, and in Chicago and Cook County.

In addition to the interlocking jurisdiction of overlapping districts, further complexities have been introduced by creating authorities with a special and sometimes almost independent legal status. Public libraries are under the control of boards of directors, appointed in cities by the mayor with the approval of the city council, and elected in towns, villages and townships. In cities which have adopted the city election act, there are boards of election commissioners appointed by the county judge, and with relations both to the county and city government.

Special Legislation for Chicago: A good deal, though by no means all, of the legislation which permits variations in local government has been enacted with particular reference to conditions in Chicago. With more than twenty times the population of the next largest city in the State serious local problems have arisen there long before they were evident in other communities. Whether or not these problems could have been met by a more liberal policy of general legislation, under the prevailing methods of piece-meal and detailed legislation there has been a pressing demand for many laws to meet the local conditions in the metropolis.

Some recognition of this situation appears in the Constitution of 1870, in the special provisions for the courts and county board of Cook County. The same factors explain two of the seven amendments to that Constitution which have been adopted. One of these (Section 13 of Article IX) adopted in 1890, permitted Chicago to issue bonds in aid of the World's Columbian Exposition in excess of the debt previously authorized. The other (Section 34 of Article IV) adopted in 1904, authorized local or special legislation for the municipal government of Chicago, with the qualification that no such law "shall take effect until consented to by a majority of the legal voters of said city voting on the question at any election".

Under this amendment some special legislation for Chicago has been adopted. The most important measures adopted have been acts increasing the term of the mayor to four years, and establishing the municipal court. A comprehensive charter was framed by a local convention; but was so modified by the General Assembly before passage (in 1907) that it was defeated at the local referendum. Another act (of 1915) for the consolidation of the park districts and some other local authorities with the city has also failed to receive local approval.

It should also be noted that the present constitutional provision does not authorize the consolidation of county government with that of other local authorities, while it contains a number of detailed requirements which limit what can be done.

Local Control of Street Railways: Section 4 of Article XI of the Constitution of 1870 provides that:

"No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway to be occupied by such street railroad."²²

As construed by the Supreme Court in the earlier cases arising under this section, it appeared to vest in the local authorities a large measure of control over street railroads. In *Byrne v. Chicago General Railway Co.*, it was decided:

"That the use of the streets in the cities of this state by street car companies is subject to the consent of the common council, and that in granting such consent, the common council may impose such conditions as, in its opinion, the public benefit may require. Under the constitution not even the legislature has the power to grant the right to construct and operate a street railroad within a city without the consent of its common council."

But this was somewhat qualified by the further statement that:

"They [the municipal authorities] may impose any conditions not illegal and not forbidden by the statute."²³

In the later case of *Venner v. Chicago*, which upheld the street railway ordinances of 1907, providing for the combination and joint operation of street railway lines in Chicago, it was stated that:

"The constitution commits to the city the control of the operation of street railways in its streets. It is for the city to determine whether such operation shall be competitive or monopolistic; to grant the privilege to many or confine it to one."²⁴

This statement was quoted and re-affirmed in the case of the *People v. Chicago*, upholding the unification ordinance of 1913.²⁵

In the meantime, however, the opinion had been expressed that this section of the constitution did not give to cities the exclusive control of their streets.

²² This section appears to have been the outcome of opposition to the so-called ninety-nine year act, passed in 1865, over the veto of Governor Oglesby, extending the rights of street railways in Chicago. Early in the convention of 1870 two resolutions were introduced, one by Mr. Eldridge and one by Mr. Anthony, each including substantially this provision. One of these also provided for the consent of property owners, and the other provided that street railroads should pay their share of special assessments for street improvements. The Committee on Miscellaneous Corporations reported the provision for the consent of local authorities, and this was approved by the convention without debate. The Committee on Revision and Adjustment added the word "requiring", so that the consent could be given after the passage of the law, and in this form the section was adopted. *Debates and Proceedings*, I, 151, 154; II, 1664, 1667, 1837.

²³ *Byrne v. Chicago General Railway Co.*, 169 Ill. 75, 83.

²⁴ *Venner v. Chicago*, 258 Ill. 523, 546 (1913)

²⁵ *People v. Chicago*, 270 Ill. 188, 202 (1915)

"While a municipal corporation is vested with the control of the streets within its corporate limits, such control is not exclusive, but is subject to the superior control which may be exercised by the State at any time."²⁶

Later, in the case of the Public Utilities Commission v. The C. & W. T. Ry., upholding the Public Utilities Act of 1913, it was held that Section 4 of Article XI, "is simply a limitation of the general powers of the legislature, and in one particular only * * * that section of the constitution does not, by implication or otherwise, attempt to divest the State of its paramount authority and control of streets and highways."²⁷

In the more recent case of Chicago v. O'Connell, it has been more positively set forth that section 4 of Article XI does not restrict the police power of the State, which may be exercised even against the provisions of agreements made by a city and a street railway in granting its consent.

"The statement * * * that the constitution commits to the city the control of the operation of street railways in its streets merely means that the constitution has conferred, upon the city, power to determine whether street railways shall be operated upon the streets of the city, and if so upon what streets. To this extent, and no further, the constitution has committed to the city the control of the operation of street railways in its streets. * * *

"The regulation of public utilities is one phase of the exercise of the police power of the State. * * * The settlement ordinance and the unification ordinance * * * constitute binding contracts between the city and the railway companies * * * so far as the contracts relate to matters which do not affect the public safety, welfare, comfort or convenience.

"But a municipality can not contract away the right to exercise the police power to secure and protect the morals, safety, health, order, comfort or welfare of the public, nor limit or restrain by any agreement the full exercise of that power."²⁸

General Situation: Under the present situation, local communities in Illinois are substantially protected from arbitrary interference by special legislation, while through optional laws there is some field of choice with reference to the forms of local organization. But complaints are made that it is difficult and sometimes impossible to secure adequate authority to deal with local problems; and it is urged that there should be a larger field of municipal freedom and positive authority both with reference to the forms of organization and the functions of local government. This demand for a greater degree of municipal home rule aims at constitutional provisions similar to those now in force in thirteen other states.

²⁶ Chicago & S. T. Co. v. I. C. R. R., 246 Ill. 146, 155 (1910).

²⁷ Pub. Ut. Co. v. C. & W. I. Ry. 275 Ill. 555, 570 (1916).

²⁸ Chicago v. O'Connell, 278 Ill. 591, 601-607 (1917) recently affirmed by the United States Supreme Court. See Chicago v. Chicago U. T. Co., 199 Ill. 259 (1902); Chicago v. Chicago City Ry. Co., 272 Ill., 245 (1916).

Municipal powers are also handicapped by the constitutional restrictions on taxation and debt, which will be considered more fully in another pamphlet. The requirement of uniformity in taxation has prevented changes in the system of taxation. The debt limit is lower than in other large states; and its operation has been changed from time to time by the creation of overlapping taxing districts, and by changes in the basis for the assessment of property, from a fifth, to a third, and (in 1919) to one-half of the so-called full value.

III. STATUS OF MUNICIPALITIES IN OTHER STATES.

State and Legislative Supremacy: The prevailing rule in American states as to the basic legal relation between the state and municipalities is the same as in Illinois. Municipal corporations are created by the state, and derive all their powers from the state; and are subject to the control of the state legislature, except as limited by the state constitution. This rule is not only laid down by the supreme courts of the States; but has also been recognized by the Supreme Court of the United States.

"Municipal corporations are mere instrumentalities of the state for the more convenient administration of the state government. Their powers are such as the legislature may confer, and these may be enlarged, abridged or entirely withdrawn at its pleasure. * * * There is no contract between the state and the public that the charter of a city shall not be at all times subject to legislative control."¹

In a few states, however, the courts have declared a doctrine of an inherent right of local self-government, based on the general principles and spirit of American government. This was set forth by Judge Cooley in Michigan in 1871; and has been followed in a few cases in that and some other states. But the application of this rule has been narrowly limited even in the states where it has been announced; and the general principle both of law and practice is that the only limitations on legislative action are to be found in constitutional provisions.²

Constitutional Limitations: Under the earlier state constitutions, with few restrictions of any sort on the legislature, and none specifically protecting municipal corporations, the power of the legislature over such local governments was practically unlimited. In later constitutions and amendments in other states, as in Illinois, not only have provisions been adopted on other subjects which indirectly affect municipal corporations, but also definite provisions relating to municipal government. Some of these have aimed at restricting legislative control over local administration by providing for the local selection of officers and by the prohibition of special legislation. At the same time, the same or other provisions have

¹ Justice Field, in *Meriwether v. Garrett*, 102 U. S. 472 (1880); See *U. S. v. R. R. Co.*, 17 Wall. 322 (1872); *Conns v. Lucas*, 93 U. S. 108 (1876). But lawful contracts of such a corporation may be enforced by the U. S. courts against its private property not held for public purposes.

² *People v. Hurlbut*, 24 Mich. 44 (1871).

authorized or imposed restrictions on municipalities, especially with reference to debt and taxation.

A few of the first state constitutions provided for the local election of some county officers; and later constitutions have provided for an increasing list of elective county officers. Except in the North Atlantic group of states, most state constitutions now have some restrictions on the formation of new counties.

One of the earliest provisions relating to cities was an amendment to the Massachusetts Constitution, adopted in 1821, authorizing the legislature to constitute municipal or city governments, but limiting this to towns of 12,000 inhabitants, and requiring the consent of a majority of those voting at a town meeting.

In New York state, city mayors had in early times been appointed by the state; but constitutional amendments in 1833 and 1839 provided for their local election. In the New York convention and constitution of 1846 some attention was given to questions of municipal government. The prohibition of special legislation was proposed; but in the revised constitution, while this prohibition was applied to corporations in general, an exception was made in the case of those for municipal purposes. The following provisions were adopted relating to incorporation, taxation and debt:

"Article VIII, Sec. 9. It shall be the duty of the legislature to provide for the incorporation of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations".

Section 2 of Article X provided for the local election or appointment of county, city, town and village officers.³

These same provisions were adopted in the first Wisconsin Constitution of 1848; and provisions similar to the first of these have since been adopted in a number of other states. The revised constitutions of Virginia and Kentucky, adopted in 1850, each contained provisions for the local election or appointment of municipal officers.⁴

Restrictions on Special Legislation: Constitutional provisions prohibiting special legislation for corporations, "except for municipal purposes", were adopted by Louisiana in 1845, New York in 1846 and California in 1849. The California Constitution further provided that "The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the state."⁵

³ Lincoln, *Constitutional History of New York* II, 6, 198-203, 208.

⁴ Wisconsin Constitution of 1848, Art. XI, Sec. 3; Art. XIII, Sec. 9. Virginia Constitution of 1850, Sec. 34. Kentucky Constitution of 1850, Art. VI, Sec. 6.

⁵ New York Constitution of 1846, Art. VIII, Sec. 1. California Constitution of 1849, Art. XI, Sec. 4.

The Indiana Constitution of 1851 also contained a prohibition on special legislation for corporations without the exception of municipal corporations, as follows:

"Corporations, other than banking, shall not be created by special act, but may be formed under general laws." (Art. XI, Sec. 13).

It has been held by the Supreme Court of Indiana that this section applies to municipal corporations.⁶

More definite provisions prohibiting special legislation for municipalities were included in the Ohio Constitution of 1851, as follows:

"Art. XIII, Sec. 1. The General Assembly shall pass no special act conferring corporate powers."

"Sec. 6. The General Assembly shall provide for the organization of cities and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

"Art. II, Sec. 26. All laws of a general nature shall have a uniform operation throughout the state; nor shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly except as otherwise provided in this constitution."

It will be noted that the last quoted provisions prevented the practice of optional legislation, as in Illinois.

Following Ohio, many other states have adopted constitutional provisions against special legislation on municipal government. Half a dozen states had such provisions before the Illinois Constitution of 1870 was adopted.⁷

Ten other states adopted similar provisions in the decade 1870-1880.⁸

Eleven more states followed from 1889 to 1895⁹ and six others since 1900.¹⁰

Altogether there are now thirty states in which the constitutions require general laws for municipalities or definitely prohibit all special legislation for cities and other municipalities, or have provisions which the courts have construed to have the same effect. Four other states prohibit special legislation for the smaller cities or villages in the state.¹¹

Two states, not included above, and several of those already noted, impose other restrictions on the passage of special legislation.

⁶ *Town of Longview v. City of Crawfordsville*, 164 Ind. 117.

⁷ Iowa, 1857; Kansas, 1859; Florida, 1865; Nebraska, 1867; and Arkansas, 1868.

⁸ Illinois, 1870; West Virginia, 1872; Texas and Pennsylvania, 1873; New York (for villages) 1874; New Jersey and Missouri, 1875; Colorado, 1876; Louisiana and California, 1879.

⁹ Idaho, North and South Dakota, Wyoming and Washington in 1889; Mississippi in 1890; Kentucky, Minnesota and Wisconsin in 1892; South Carolina and Utah in 1895.

¹⁰ Alabama, 1902; Oregon, 1906; Oklahoma, 1907; Michigan, 1908; Arizona and New Mexico, 1911.

¹¹ Louisiana (except municipal corporations of over 25,000 and enumerated special districts); New York (villages only); Texas (cities and towns of 5,000 or less); and West Virginia (incorporating cities, towns or villages, or amending the charter of any city, town or village of less than 2,000).

There are no prohibitions on special legislation on municipal government in twelve states.¹²

Results under Prohibition on Special Legislation: Constitutional requirements for general laws on municipal government and prohibitions on special legislation have greatly reduced the amount of legislation for particular municipalities, and have checked legislative interference in local affairs. But laws applying only to particular communities have continued to be enacted to a considerable extent, as in Illinois, by the classification of municipalities, or by the subject matter of the laws. This has been due, primarily, to the continued practice of detailed legislation, under which the local communities have often asked for variations from the general provisions; while at times political and other factors in the legislatures have led to active interference with local government.

In a number of states a comparatively simple system of classification for municipalities has been adopted, with from three to five classes. Even in such cases the largest city in the state is usually in a class by itself, and legislation for it is substantially special in character. But such a general classification has often been supplemented in subsequent laws prepared with reference to particular communities. The device of classification was most highly elaborated in Ohio, where before 1902 there were eleven classes and grades and each of the eight principal cities in the state was in a distinct class or grade. This situation eventually led to a decision of the Supreme Court in that state, holding the existing scheme of classification to be invalid as an evasion of the State Constitution.¹³

As a result of this decision, a general law applicable to all cities was passed; but dissatisfaction with the detailed requirements of this law was an important factor in the demand which led to the adoption of the present system of municipal home rule in that state.

Other Methods for Limiting Legislative Control: A number of states have adopted other methods for dealing with special legislation. The North Carolina constitution formerly contained a provision requiring public notice of special laws; but this has been omitted from the present constitution. The Pennsylvania constitution of 1873 requires 30 days previous public notice before the introduction of any local or special bill. Similar provisions have been adopted in Arkansas (1874), Missouri and New Jersey (1875), Texas (1876), Georgia (1877), Alabama, Louisiana, Florida (1885) and Oklahoma, (1907). In some of these states, the courts have held that these provisions are merely directory; and that passage of a special or local act is assumed

¹² The six New England states, and Delaware, Maryland, Florida, Tennessee, Montana and Nevada.

¹³ *State v. Jones*, 66 Ohio S. 453 (1902).

to determine that the requirements have been met. To meet this, the Alabama constitution of 1901 provides that affidavit of notice shall be spread upon the journal. The Oklahoma constitution requires verified proof of publication to be filed with the Secretary of State.

The Mississippi constitution of 1890 provides for a standing committee in each house on local and private legislation, and requires for the passage of special and private bills an affirmative recommendation of the committee, or, if the committee reports adversely, a majority of all the members elected. The Virginia constitution of 1902 provides for a joint standing committee to which all local, special or private bills shall be referred for report as to the need for special legislation, before reference to the regular committees of each house.

The New York Constitution of 1894 groups cities into three classes, according to population; and provides that any bill for a special city law (defined as one relating to less than all the cities of a class) after it has passed both branches of the legislature, must be transmitted to the mayor of such city; and if not accepted by the mayor (in cities of the first class) or by the mayor and council, it must be passed again by the legislature and subject to the action of the governor before it becomes law. This procedure has prevented the enactment of a good deal of special legislation not accepted by the cities; but in some cases special acts have been enacted against the objection of the cities concerned; and there is of course no positive grant of power in this provision.¹⁴

A more effective local veto is provided by the local referendum required on special legislation for Chicago under the amendment of 1904 to the Illinois Constitution. A similar provision of broader application is that in the Michigan Constitution of 1908 that no local or special act shall take effect until approved by a majority of the electors voting thereon in the district to be affected.¹⁵

¹⁴ From 1895 to 1915, a total of 142 local vetoes were overridden by the legislature; from 1902 to 1914, 524 local votes were effective. After 1910, the number of measures passed over the local veto was much reduced, as shown by the following statement:

Total number of bills introduced, 1910 to 1915.....	13,508
Total number of special city bills introduced.....	2,776
Number of special city bills defeated in legislature.....	1,353
Number of special city bills passed by legislature.....	1,423
Number of special city bills passed and accepted by cities.....	1,176
Number of special city bills passed but not accepted by cities.....	247
Number of special city bills accepted by cities but vetoed by the governor.....	201
Number of special city bills not accepted by cities but repassed by the legislature.....	11
Number of special city bills repassed over city's veto but defeated by governor's veto.....	3
Number of special city bills not accepted by cities which became law.....	8
Total number of special city bills which became law.....	983
Total number of all bills which became law.....	4,260

Seth Low in New York Constitutional Convention (1915), Revised Record II, 1962; Preliminary Brief for Home Rule, by the Citizens Union, p. 11.

¹⁵ Constitution of 1908, Art. V, Sec. 30. By an amendment adopted November 1916, exception is made for acts repealing local or special acts in effect January 1, 1909, and receiving a two-thirds vote of the legislature.

Optional Laws: One method for partially meeting the demand for local freedom as to local government, and also for avoiding the constitutional provisions against special legislation, has been by the enactment of optional laws, applicable to cities which adopt them by popular vote. This may be considered an extension of the principle of the referendum on special charters.

Reference has already been made to the use of this method in Illinois, in connection with township government, for the establishment of special districts, and for some features of city government. Similar optional laws have been passed in other states. Beginning with Iowa and Kansas in 1907, the commission form of city government has been authorized in about twenty states¹⁶ by optional general laws; and more recently optional city manager laws have been passed in several states.

Within the last few years a number of states have passed laws providing a series of optional plans of municipal organization. An Ohio law of 1913 provides three alternative plans—the commission form, the city manager plan, and the mayor and council plan. A New York law of 1914 provided for six optional forms of city government.¹⁷ Under a Massachusetts law of 1915 any city, except Boston, may adopt one of four plans—a mayor and council elected at large, a mayor and council elected partly from wards, the commission form, or the city manager plan. Similar laws with optional plans of municipal organization were enacted by Virginia in 1944 and North Carolina in 1917.

Such laws offering a definite series of alternative and presumably well considered general plans of municipal organization, present an advance on the piecemeal optional legislation in Illinois. But they do not grant cities full authority to work out their own plans of governmental organization.

Financial Restrictions: Along with the tendency in state constitutions to restrict special legislation, there has been another to restrict the financial powers of municipalities. Beginning with New York in 1846, a number of states adopted constitutional provisions specifically providing that the legislature should restrict the powers of municipal corporations to tax, borrow money, contract debts, or loan their credit. In 1851, Indiana prohibited counties from loaning their credit or subscribing to the stock of corporations; and Ohio placed a similar prohibition on counties, cities, towns and villages. Similar or partial limitations of the same kind were imposed in several other states before 1870; and after that year (as in Illinois) by additional states. After 1870 constitutional limitations on the total amount of municipal debt were adopted in

¹⁶ Iowa, Kansas, North and South Dakota, 1907; Mississippi, 1908; New Mexico, Minnesota, Texas and Wisconsin, 1909; Illinois, Kentucky, Louisiana and South Carolina, 1910; Alabama, California, Idaho, Montana, New Jersey, Utah, Washington and Wyoming, 1911.

¹⁷ Held constitutional, *Cleveland v. City of Watertown*, 222 N. Y. 159 (118 N. E. 500) (1917).

some states; and such debt limits are now found in the constitutions of 28 states. Nebraska and South Carolina have maximum limits for the aggregate debts of all local districts.¹⁸

Mainly since 1900, there has been another tendency toward relaxing the restrictions on municipal debt by authorizing loans, beyond the ordinary limit, for waterworks and other public improvements and utilities. About twenty states now authorize such additional loans, most commonly for waterworks, sewers and lighting plants. South Dakota in 1902 authorized loans for street railways; Texas in 1904 authorized loans for irrigation, drainage and navigation works and roads. The Virginia constitution of 1902 exempts loans for waterworks and other revenue undertakings from the debt limit. New York has adopted a series of amendments, beginning in 1905, granting New York City extensive borrowing powers for such revenue undertakings as rapid transit lines and public docks; and similar powers have been provided by Pennsylvania in 1914 and 1918.

The Oklahoma constitution authorizes loans for public utilities, subject to a referendum by the tax payers. Michigan in 1908 and Ohio in 1912 authorize (outside the ordinary debt limit) loans for public utilities secured by mortgage on the plant. In Wisconsin an amendment has passed one legislature, in 1919, authorizing additional loans for public utilities; and the Wyoming legislature in 1919 has submitted an amendment authorizing loans for school buildings.

In some states, debt limits and other restrictions are established by statute; and municipal tax rates are in all states subject to statutory control.

Specific constitutional debt limits have not proved a satisfactory method of control. There is no agreement as to a proper limit; arbitrary percentages are not adapted to different conditions; and their effect is altered by the creation of overlapping districts and by variations in the basis of assessment, which may be changed from time to time as in Illinois.

¹⁸ Massachusetts Constitutional Convention Bulletin No. 14.

IV. MUNICIPAL HOME RULE.

Legislative Home Rule: In contrast with the prevailing practice of detailed legislation on municipal government, there are a few instances where state legislatures have enacted measures providing in comprehensive terms that cities should have power to amend their charters or adopt new charters. Thus the Iowa Act of 1858 for the incorporation of cities and towns, passed after the prohibition of special legislation in that state, provides for the amendment of existing city or town special charters on petition of one-fourth of the voters, or submission by the local legislative body, and approved by a referendum of voters. This Act was upheld by the Supreme Court of Iowa, and is still part of the statute law of the state, though it does not appear to have been used very much.¹

Reference was made to this Iowa law in the Illinois Convention of 1869-70; but no similar act has been passed in this state. It may be noted, however, that it has been suggested, in a Supreme Court opinion in Illinois that: "The legislature * * * might provide a system by which municipalities should become incorporated, or for changing and amending existing charters, in the discretion and through the agency of those to be affected."²

Laws somewhat similar to that of Iowa have been enacted more recently in a number of other states: Louisiana in 1896, South Carolina in 1899, Mississippi in 1900 and Florida and Connecticut in 1915.³ The Mississippi Act has been applied in several cases, and has been upheld by the Supreme Court of the State.⁴

¹Laws of Iowa, 1858, ch. 157; Code of 1897, S. 1047; *Ex parte Pritz*, 9 Iowa 222 (1870); *Davis & Bro. v. Woolnough*, 9 Iowa 104 (1859); *Hetherington v. Bissel*, 10 Iowa 145 (1859); *Voss Phul v. Harmer*, 29 Iowa 22 (1870). It may be noted that in the last of these cases, the original special charter of the city (Newton) contained a provision authorizing its own amendment, although this is not referred to in the judicial opinion.

²*People v. Cooper*, 83 Ill. 585, 590.

³A Louisiana Act of 1896 provides that new charters may be adopted and promulgated by any city or town except New Orleans, on petition of a majority of the property owners and ratification by popular vote. No test of this act appears to have been made in the courts; and it may be doubted if it has been used.

Acts of the General Assembly 1896, p. 190; Revised Statutes, 1915, Secs. 4865-70.

In South Carolina a similar act for the amendment of town and city charters was passed in 1899, with a provision that the amendments adopted should be filed with the Secretary of State.

Acts of the General Assembly 1899, No. 42; Civil Code 1912, Sec. 2985. See *Hill v. Abbeville* 59 S. C. 407 (1901).

⁴The Mississippi act of 1900 provides for the amendment of independent charters by the mayor and council on the approval of the governor and attorney general as consistent with the constitution and laws of the United States and the state constitution; but on protest by one-tenth of the electors, the amendments must be submitted to popular referendum. This act has been applied in several cases and has been upheld by the Supreme Court of Mis-

The provisions of these laws are brief and crude, and do not attempt to solve the difficult problems which arise as to the scope of municipal powers; while very little has been done under their authority. It is, of course, always possible for the legislature to repeal the act, or to override any locally adopted charter provision by subsequent legislation of its own.

Somewhat similar acts, passed in Michigan (in 1899) and Wisconsin (in 1911) have been held to be invalid, as an unconstitutional delegation of legislative power.⁵

A New York "home rule" law of 1913, granting an extended list of powers to all cities, enumerated in 23 articles, has been largely ineffective, first because of the doubt as to the legal capacity of the legislature to devolve so much power of local legislation, and second because of provisions in existing charters.⁶

Constitutional Home Rule: Beginning with Missouri in 1875, thirteen states have adopted constitutional provisions authorizing cities (and in some cases also villages and counties) to frame and adopt their own charters of municipal government. These provisions have been frequently used; and an examination of this development and its operation will be of service in relation to the problem in Illinois.

In the Missouri Constitution of 1875, provisions were adopted authorizing any city of over 100,000 population to frame and adopt a charter, with special provisions for the city of St. Louis. Under these provisions, new charters were prepared and adopted by St. Louis in 1876 and by Kansas City in 1888; and revised charters were prepared and adopted by Kansas City in 1908, and by St. Louis in 1914.

Mississippi, one case holding that under it a city having a special charter might adopt an amendment providing for the owning and operating of an electric railway and issuing bonds therefor.

Laws of Mississippi, 1900, ch. 69; Code of 1906, Sec. 3444; *O'Flinn v. McInnis*, 80 Miss. 125 (31 So. 584) (1902); *Yazoo City v. Lightcap*, 82 Miss. 148 (33 So. 949) (1903). It was noted that the Mississippi Code of 1857 had provided that applicants for corporate charters (including municipal corporations) should prepare a charter, stating the powers to be exercised, and on approval by the Governor and Attorney General these powers should be vested in the corporation. Similar provisions had been continued in later laws and the Code of 1892. *Adams v. Kuykendall*, 83 Miss. 571 (35 So. 830) (1904); *Love v. Holmes*, 91 Miss. 535 (44 So. 835) (1907). "The Act of the Legislature has given municipalities operating under special charters the power to so amend their charters as to do anything they may wish, provided only that the amendment does not conflict with the enumerated laws."

In 1915 two other state legislatures passed acts of the same nature. A Florida act authorizes every city and town to change the provisions of its charter as to organization and powers of offices and boards, but not to enlarge its corporate powers, by means of an elected charter board and a popular referendum. A Connecticut act provides that any town governed under a special act, or any borough or city, may amend its charter, through a charter commission and a local referendum. Acts relating to local or police courts may not be amended in this way.

Florida Acts and Resolutions 1915, ch. 6940 (No. 134); Connecticut Public Acts, 1915, ch. 317.

⁵ *Elliott v. City of Detroit*, 121 Mich. 611 (1899); *State v. Thompson*, 149 Wis. 488 (1912).

⁶ Seth Low in New York Constitutional Convention (1915) Revised Record II, 1968.

Four years after the Missouri Constitution, a similar provision was adopted in the California Constitution of 1879; but San Francisco (the only city of over 100,000 population) did not adopt a new charter until 1898. In the meantime the population limit in the California Constitution was reduced in 1887 to 10,000 and in 1892 to 3,500; and, beginning with Los Angeles in 1889, more than thirty cities have framed and adopted new charters. In 1911, a constitutional amendment was adopted in California authorizing counties to frame and adopt local charters; and this has been acted on by two counties.

In 1889 the constitution for the new state of Washington included a provision authorizing cities of over 20,000 population to frame and adopt their own charters. Seattle and Tacoma adopted new charters under this plan in 1890; and these have since been followed by Spokane and Everett, all but one of the cities of over 20,000 population in the state.

The next state to adopt this method was Minnesota, where a constitutional amendment was ratified in 1896, authorizing any city or village to frame and adopt its charter. Within a few years new charters had been adopted by St. Paul and Duluth, and several smaller cities; and more than forty cities and villages have now adopted charters by this method.

In 1902, a constitutional amendment was adopted in Colorado, forming a consolidated City and County of Denver; and authorizing it, and also each city or town with 2,000 population, to make, amend and revise or replace its charter. Under this provisions Denver, Colorado Springs, Pueblo and several other cities have adopted new charters.

Thus far the movement for constitutional home rule had progressed but slowly; and of the five detached states where local charters were authorized only in two (California and Minnesota) had many cities acted under the provisions. But beginning in 1906, more rapid headway was made. Oregon adopted a home rule provision in 1906, Oklahoma in 1907, Michigan in 1908, four states (Arizona, Nebraska, Ohio and Texas) in 1912, and Maryland in 1915. In Oregon, Michigan and Ohio these provisions apply to all cities and villages; in Oklahoma to cities of more than 2,000 population; in Arizona to cities of over 3,500 population; in Texas to cities of over 5,000 population; and in Maryland only to the city of Baltimore and to counties.

Active use has been made of this authority in all of these states except Arizona and Nebraska. In each of the states of Oregon, Oklahoma, Michigan, Ohio and Texas, more than a score of cities and villages have adopted new charters; and other cities and villages (in Oregon, Michigan and Texas) have amended earlier legislative charters. Among the larger cities in these states with home rule charters are Cleveland, Cincinnati, Dayton, Detroit, Portland, (Oregon) and Baltimore.

Altogether more than 200 cities and villages in the United States are now operating under home rule charters, framed and adopted

under constitutional provisions. These include fifteen of the thirty largest cities in the country.

A constitutional amendment authorizing home rule charters was submitted in Wisconsin in 1914, but failed of adoption. The proposed New York Constitution of 1915 contained a series of complicated provisions for home rule city charters; but this constitution was defeated.

A proposed amendment authorizing legislative home rule was approved by the New York legislature in 1917, but has not been re-passed as required. A proposed home rule amendment has been approved by the Wisconsin legislature in 1919, but must be re-passed at a later session. In Utah a proposed amendment, submitted by the legislature in 1919, will be voted on in 1920. •

Charter-making Procedure: In most of the constitutional provisions for municipal home rule, the main emphasis has been laid on the authority to frame and adopt charters. In most cases the procedure for charter-making is prescribed in the constitution; but this is not done in Oregon, Michigan and Texas; and in Michigan and Texas the constitutional provisions have been supplemented by legislation regulating the procedure and methods to be followed.

It is urged in support of detailed constitutional provisions on procedure, that unless these are definitely set forth in the constitution the grant of municipal home rule is merely formal and directory, and remains subject to legislative control in the enabling act. On the other hand it may be said that the grant of substantive powers is of more importance than the details of procedure; that the variations in the procedural provisions in the various constitutions and their frequent amendment indicate the absence of agreement as to the best system of procedure; that none of the constitutional provisions is entirely self-executing; and that in the states where the procedure is regulated by statute workable provisions have been adopted and there has been no serious complaint that the legislature has abused its power, while changes in detail may be more readily made.

In ten of the thirteen home rule states (all except Minnesota, Oregon and Colorado) the local councils may initiate charter-making proceedings; in eleven states (all except Missouri and Washington), the initiative may be begun by popular petition; and in eight states (all but the five named above) either method may be used.

All of the home rule states except Oregon provide for a special body to draft the charter, styled a board of freeholders or charter commission. These bodies consist of from 11 to 21 members, elected at large, except in Oklahoma and Michigan (where members are elected by wards) and in Minnesota where they are appointed by the district judges. In Oregon proposed charters or amendments are

presented by initiative petition or by the local council. In Maryland county charter boards have only five members.

In seven states, only freeholders may be members of the charter boards. In several states there are special residence requirements. In some states any qualified voter may be chosen. Most states provide no compensation for the charter board; but compensation is authorized in Colorado and Michigan.

Most states fix a time limit for the preparation of the charter, ranging from 30 days in Washington to one year in Ohio. From 90 days to six months are the more common periods.

In all the home rule states proposed charters and amendments must be submitted to popular ratification. In six states provision is made for publication in local newspapers; in California charters must also be printed in pamphlet form for distribution on application; and in Ohio, Oregon and Texas a copy of proposed charters must be sent to every voter before the election. It is usually provided that the ratification election must come within certain time limits after publication—generally from 20 to 90 days.

A majority of those voting on the charter is in most cases sufficient for ratification. In Texas, however, there must be a majority of the total vote at the election. Missouri and Minnesota require three-fifths or four-sevenths, respectively, of those voting at the election, a provision which has increased the difficulty of adopting charters.

In several states provision is made for submitting charters to state authorities before they go into effect. In California, all charters are transmitted to the legislature for approval or rejection as a whole. In Arizona and Oklahoma, charters are submitted to the Governor, who shall approve them unless in conflict with the constitution or [and] laws of the state. In Michigan the legislative act provides that proposed charters before ratification shall be submitted to the Governor, and if he disapproves a two-thirds vote of the charter commission is required. Thus far no charters have been disapproved in these states.

Most states provide that official copies of charters and amendments shall be filed with the Secretary of State; and in several states it is specifically provided that the courts shall take judicial notice of such charters.

Amendments to former legislative charters may be adopted under the home rule procedure in Oregon, Michigan and Texas, without first adopting a new charter by this method. In the other home rule states, amendments may be made only to home rule charters. The procedure for amendments is similar to that of framing a new charter, except that a special charter board need not be organized. In most cases amendments may be prepared either by the local council or by popular petition. In Missouri and Washington amendments may be proposed only by the council; and in Colorado only by petition. The proceedings for the submission and ratification of amendments is the same as for new charters.

Scope of Municipal Powers: In about half of the states which have provided for home rule charters, the constitutional provisions have not attempted to define even in general terms, the substantive powers intended to be conferred on cities by the authority to frame and adopt their own charters. At the same time, most of the earlier constitutions with home rule provisions also provide that the local charters are subject to the constitution and laws of the state.⁷

In California the original provision contained a similar phrase; but this was modified by another clause that a home rule charter of a city should "become the organic law thereof, and supersede any existing charter and all amendments thereof, and all *special* laws inconsistent with such charter."

Under these conditions questions soon arose where home rule charter provisions conflicted with State laws, and the courts were called on to decide whether the provisions of the charter or the state law should be upheld. In Missouri charter provisions have been held invalid when they were inconsistent with state laws relating to police, liquor licenses, elections, taxation and assessments; but charter provisions were held to supersede State laws relating to parks, street improvements and the removal of municipal officers. In California, under the original provisions, the Supreme Court held that municipal charters were subordinate to general laws enacted by the legislature.

In Washington and Minnesota the courts have upheld state laws as against local charters, and the scope of municipal authority has been in effect dependent on the legislature.⁸

In the Oregon home rule amendment of 1906, the legal voters of every city and town are granted power to enact and amend their municipal charter, "subject to the constitution and criminal laws of the state of Oregon." After some hesitation in early decisions, the supreme court of Oregon has held that the legislature may enact general laws which modify the charters of all cities and municipalities.⁹

In view of these difficulties, later constitutional provisions in several states have included more positive and more definite statements of powers conferred. The California provisions have been amended several times with this object. In 1892 it was provided that a home rule charter should supersede "all laws inconsistent" therewith. In 1896, an additional section was adopted enumerating certain matters which could be provided for in such charters, viz.: the constitution and jurisdiction of police courts, and the selection and terms of boards of education, police commissioners, and election boards. This list has been later extended by including the regulation of municipal elections, the consolidation of city and county government and other matters. In 1906 the clause that charters

⁷ Arizona, Minnesota, Missouri, Nebraska, Oklahoma and Washington.

⁸ McBain: Law and Practice of Municipal Home Rule, pp. 124, 133-171, 245-257, 456, 497.

⁹ Illinois Municipal League Proceedings IV, 86, 98; State v. Port of Astoria, 79 Ore. 1 (154 Pac. 399); Rose v. Port of Portland, 82 Ore. 541 (162 Pac. 498); Note also Kalich v. Kalich, 73 Ore. 558 (142 Pac. 22).

should be subject to the constitution and laws was amended by omitting the words "and laws." And in 1914 a further amendment was adopted including the following provision:

"It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may make and enforce all regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and *in respect to other matters* they shall be subject to general laws."

The later amendments to the California provisions have increased in length and detail. The amendment of 1911 relating to county charters covers 8 pages, specifying provisions relating to county officers and their powers, and duties. An additional amendment, adopted in 1918, relating to consolidated city and county government is 18 pages long, and appears to have been prepared with reference to the particular case of Alameda County. The section enumerating what a city charter may contain, as amended in 1914 and 1918, is 8 pages in length. The home rule provisions for counties and cities now aggregate 40 pages in the state constitution.

Such detailed provisions go far beyond what is suitable for a state constitution. They show the influence of the same tendency to deal with specific matters rather than questions of general principle, which has been the source of trouble in statutory legislation on municipal government. Even with the adoption of frequent amendments, the result will be to hamper the cities in the future. Such methods of dealing with the problem should be avoided.

The Michigan constitution of 1908 leaves the details of charter procedure to legislation, but gives more attention to the scope of municipal powers than the earlier provisions in other states. The main provisions adopted are as follows:

Article VIII. Local Government. "Sec. 20. The legislature shall provide by a general law for the incorporation of cities and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts."

"Sec. 21. Under such general laws the electors of each city shall have power and authority to frame, adopt and amend its charter, [and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village], and through its regularly constituted authority *to pass all laws and ordinances relating to its municipal concerns*, subject to the constitution and *general laws* of the state.¹⁰"

Other sections enumerate powers as to certain public institutions and works, and public utilities, and authorize limitations on cities and villages as to taxation, debts and some other matters.

In the constitutional provisions adopted by Ohio in 1912 is the following general statement of municipal powers:

¹⁰ Clause in brackets is an amendment added in 1912, on account of a decision of the Supreme Court.

Article XVIII. Municipal Corporations. "Sec. 3. Municipalities shall have authority to exercise all powers of local self government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."

Other sections enumerate powers as to public utilities, excess condemnation and special assessments, with provisions as to limitations on taxes, debts and financial reports.

The Colorado amendment of 1902 stands alone in containing no definite provision that municipal home rule charters shall be subject to the state constitution or laws; but in its original form it contained no definite statement of municipal powers. A later amendment proposed by initiative petition and ratified in 1912, contains both a general statement and a specific enumeration of municipal powers. The general statement is as follows:

Article XX. "Sec. 6. The people of each city or town in this state, having a population of 2,000 inhabitants * * * are hereby vested with, and they shall always have power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters."

"Such charter and the ordinances made pursuant thereto, in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith."

The enumerated powers include: (a) the creation and terms of municipal officers, their powers, duties, etc.; (b) the creation and regulation of police and (c) municipal courts, their jurisdiction and offices; (d) all matters pertaining to municipal elections; (e) the issue, refunding and liquidation of all kinds of municipal obligations; (f) the consolidation and management of park or water districts; (g) the assessment, levy and collection of taxes; and (h) the imposition, enforcement and collection of fines and penalties.

Following the enumeration it is further set forth that:

"It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny to such cities and towns any right or power essential or proper to the full exercise of such right."

"The Statutes of the State of Colorado, so far as applicable shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."

A general grant of authority over local or municipal affairs seems a necessary complement to the power to frame and adopt home rule charters. But in view of the doctrine of strict construction followed by the courts, it will be necessary to supplement this with an enumeration of particular powers which are clearly intended to be granted. What powers will be enumerated will depend on different views as

to the powers to be conferred. If, for example, municipal home rule charters are to be allowed to include provisions on the machinery of elections, police courts, public utilities, school management, taxation, eminent domain or other matters which have been held to be essentially state functions, these matters should be specifically noted in the constitution. The present Colorado provisions appear to be the most sweeping; and next are those of California. The provisions in the constitutions of the neighboring states of Michigan and Ohio are less detailed, but more effective; and those in the proposed New York constitution of 1915 were still more detailed and also more conservative.

Requirements and Limitations: Most of the home rule provisions of state constitutions include, along with the power to adopt charters, certain mandatory provisions, and some negative restrictions and limitations. In Missouri the charter must provide for a mayor and for a bicameral council, one branch of which shall be elected at large. In Minnesota, the charter must provide for a mayor and a council of one or two branches, and if bicameral at least one branch must be elected at large. The Colorado amendment requires the City and County of Denver to designate officers who shall perform the duties of county officers, and to provide that the departments of fire and police and of public utilities and works shall be under civil service regulations.

The Michigan Constitution prohibits cities and villages from abridging the elective franchise, loaning their credit, or imposing taxes for other than public purposes; it requires a three-fifths vote for acquiring public utilities or granting irrevocable public utility franchises; and it requires the legislature to limit their powers of taxation and debt. The legislature has further required that the charter provide for a mayor, a legislative body, a clerk and treasurer, and establish regulations for the conduct of elections and a system of accounts.

In the Ohio provisions, laws are authorized to limit the power of cities to levy taxes and incur debts, and to require financial reports and the examination of municipal accounts.

The long and detailed provisions in the California constitution, while in form adding to the grant of powers, inevitably tend to limit the freedom of local action, as is also indicated by the frequency of their amendment.

Some limitations on municipal powers are necessary, and are recognized by most advocates of the home rule charter system. Such provisions as those in the Michigan and Ohio constitutions continuing legislative control over taxation, debt, financial reports and accounts, and the police power of the state, are not in conflict with the general principle of home rule in local affairs.

But if the grant of municipal home rule is to be effective, the detailed provisions of some of the constitutional provisions indicate the danger of too minute regulation in the constitution, which may have the effect of substituting a more drastic and rigid constitutional control for a more flexible system of legislative control. Requirements as to specific officials, specific financial limitations, and even detailed regulations as to charter procedure are matters outside the field of constitutional principles. Such provisions are necessarily subject to change, and are likely to hamper future development, even if the practice of some states of adopting numerous amendments to the constitution at every election is introduced.

Proposed New York Constitution: In the New York Constitutional Convention of 1915, there was an extended discussion of municipal home rule both in committee and in the convention. The proposed constitution contained complicated provisions, which attempted to define the spheres of municipal and state authority more definitely than in other home rule constitutions. There was a general grant of power to cities, followed by an illustrative enumeration of specific powers and by provisions for legislative control in matters of state concern. The general grant read:

Article XV. "Sec. 3. Every city shall have exclusive power to manage, regulate and control its property, affairs and municipal government, subject to the provisions of this constitution, and subject further to the general laws of the state, of laws applying to all the cities of the state without classification or distinction, and of laws applying to a county not wholly included within a city establishing or affecting the relation between such a county and a city therein."

Enumerated powers granted to cities were those relating to municipal organization, to city officers and employees (including police and health officers and non-judicial officers attached to courts not of record), the revision of charters and the amendment of charters, and of special or local laws relating to municipal government. State authority was reserved by providing that revised charters and amendments affecting "the framework of government" should be subject to legislative veto; by the power of the legislature to regulate "matters of state concern", either by general laws applicable to all cities, or by special city laws subject to a suspensive local veto; and by the power of the legislature to restrict the powers of taxation and assessment, and to regulate labor conditions of employees of municipalities or municipal contractors.

These provisions were accepted in the convention as a substantial measure of home rule by a large majority (120 to 17). But some of those voting in the affirmative objected to the restrictions and limitations; and most of those voting in the negative (including the present Governor of New York State) did so because they considered the

provisions inadequate. One negative vote (that of William Barnes of Albany) was in opposition to the principle of municipal home rule.

The amendment proposed in Utah in 1919 follows in some respects the provisions of the National Municipal League; but with more restrictions on municipal powers, especially a specific limitation as to public utility regulation. The proposed Wisconsin amendment of 1919 is very brief, and leaves the whole question of procedure to the legislature; but authorizes a larger borrowing power to municipalities for acquiring public service properties.

National Municipal League Proposal: Proposed constitutional provisions for municipal home rule have been prepared and recommended by the Committee on Municipal Program of the National Municipal League. This committee, with representatives from New York, Pennsylvania, Illinois, Ohio, Massachusetts, Texas and Indiana, was appointed in 1913; and after a series of meetings its recommendations were submitted in December, 1915.

These provide for the incorporation of cities and villages by a general law; for a general law for the organization and government of cities and villages which do not adopt laws or charters under other sections; for other optional laws; and for the framing and adoption of city charters by any city. The procedure for charter-making and for amendments thereto is prescribed.

Each city is to be granted authority to exercise all powers relating to municipal affairs; but this is not to restrict the power of the legislature, in matters relating to state affairs, to enact general laws applicable alike to all cities of the state. Specific powers of cities are also enumerated, including taxation and borrowing (within limits to be prescribed by general law), special assessments, public utilities, local public improvements, with power of excess condemnation, the issue of bonds secured by public utilities or excess property, and (subject to general laws) public schools and libraries, and local police, sanitary and other similar regulations. Provision is made for general laws requiring financial reports and for the examination of municipal accounts.

It is also provided that any city of over 100,000 population may be organized as a distinct county; and may provide for the consolidation of county, city and all other local authorities in one system of municipal government.

Consolidation of local districts: The problem of municipal home rule is further complicated by the existence of overlapping local districts, which are probably more numerous in Illinois than in other states. In most states, cities are the principal local districts smaller than counties, and often combine all of the functions

of local government within their limits except those of the county. Thus in most states with town or township government, cities absorb the functions of town government. In some cases the local school organization is also part of the city government; though more often the school authorities constitute a distinct municipal corporation. Special districts and corporate authorities for other purposes, such as parks and drainage, are less frequent in other states than in Illinois. As a result, the grant of home rule powers to cities in other states enables them to deal with most of the problems of local organization and government. But in Illinois home rule for cities alone will not be sufficient to deal with the local problems of towns, parks and drainage districts which embrace cities within their limits.

In the case of large cities the relations between cities and counties become important. In a number of cases in other states the local government of large cities and counties has been consolidated to some extent. New York City includes five counties; Philadelphia City and County are identical in area; Baltimore and St. Louis combine city and county functions; and Boston includes most of Suffolk county. In all of these cases, the city government includes some of the county functions and county officers. In Virginia all cities are excluded from the counties, and the city government provides for county functions.

Several state constitutions have provisions authorizing larger cities to be organized as separate counties. In Minnesota, cities of over 20,000 may be so organized; and in Michigan, cities of over 100,000. In Missouri, city and county government may be consolidated in counties having a city of over 100,000. The California constitution contains a general provision authorizing the consolidation of city and county governments and special provisions for San Francisco and for certain other counties. In Colorado the home rule provisions specifically authorize a consolidated government for the city and county of Denver.¹¹

As already noted, in the Illinois Constitutional Convention of 1869-70, a provision was at one time adopted authorizing any city with a population of 200,000 to be organized into a separate county but this was later reconsidered and stricken out, at the request of Cook County members.¹²

The general assembly of 1903 submitted a constitutional amendment, which was ratified in 1904 as Section 34 of Article IV, authorizing the consolidation of local governments within the city of Chicago. The original resolution as introduced in the general assembly provided also for the consolidation of city and county government in Chicago; but the clauses relating to county government were omitted from the proposed amendment as submitted and adopted.¹³

While this amendment was pending in the general assembly a resolution was introduced by Senator Humphrey of Cook County,

¹¹ See Pamphlet on Chicago and Cook County.

¹² Proceedings and Debates, II, 1521, 1536, 1835-6.

¹³ See Pamphlet on Chicago and Cook County.

proposing the following amendment to the constitution so as to authorize generally the consolidation of local governments within cities:

"Section 34. The General Assembly may, by general law, provide for the abolishment within cities (with the consent of a majority of the legal voters of the city voting upon the question) of township government, park and school boards, and any or all other local municipal corporations within the city, and devolve the functions upon the city authorities, and may authorize such city to assume the indebtedness of the local corporation so abolished and may in like manner, provide for the abolishment of the offices of the justice of the peace and police magistrates, in cities of 150,000 population and upwards, with like consent of the legal voters thereof; and establish one or more district courts therein, with such original civil and criminal jurisdiction as may also be prescribed by general law; and may also, by general law, allow any city with the consent of a majority of the legal voters voting upon the question, to become indebted in any amount including all existing indebtedness, except the indebtedness assumed as aforesaid, not exceeding 7 per centum, on the value of taxable property within such city, to be ascertained by the last assessment for state and county taxes prior to the incurring of such indebtedness.¹⁴⁷"

General Comparison of home rule provisions: The constitutional provisions in Michigan and Ohio and those proposed by the National Municipal League present the best basis for establishing an adequate system of municipal home rule. Of these, the Michigan provisions are the most compact as they omit details of charter procedure. The Ohio and National Municipal League provisions are more definite and more satisfactory in dealing with the scope of municipal powers, but are longer than is necessary by including detailed provisions on procedure.

Of the constitutional provisions in other states, most of them deal mainly with charter procedure and make no adequate or definite grant of municipal powers. The Oregon and Texas provisions are the shortest, but contain neither procedural provisions nor a clear statement of municipal powers. The Colorado and California provisions include provisions on procedure, and also detailed statements of specific powers, and special provisions for particular communities. In some respects, the enumerated powers in these two states go further than may be desirable; while the amount of detail, especially in the California constitution, goes clearly beyond what is suitable for a state constitution. The provisions of the proposed New York constitution, while attempting to meet difficulties raised in other states, are both too complicated and detailed, and at the same time are inadequate in the grant of municipal powers.

¹⁴⁷ Senate Joint Resolution No. 6, 1903.

V. COMMENTS AND PROBLEMS.

Criticism of Existing Conditions: The defects and evils arising from the present methods of legislation on municipal affairs may be summarized as follows:

(a) Much of the time of the state legislature is given to local measures, on which only part of the members can be expected to be familiar, and all of which are outside the field of general state legislation which is the main business of the legislature. This means, at best, a waste of legislative time, and has a demoralizing effect on the work of the legislature. It interferes with the independent action of the legislators on measures of state-wide importance, since they are often under pressure to subordinate their views on such matters in order to avoid opposition to measures general in form but of special application to their districts.

This difficulty is now less serious in Illinois than in the days of unlimited special legislation. But a large part of each legislative session is still taken up with legislation really local in character and the amount of such legislation is steadily increasing, and encroaching more and more on the time of the legislature. One result of this situation is to make local problems a factor in the election of members of the general assembly.

(b) From the point of view of the local communities, the main difficulty is the lack of adequate power to deal promptly and effectively with local problems. Every new question, outside of the established range of specified powers, and often slight modifications in the methods of exercising established powers require additional legislation. At best, even if there is no opposition in the legislature, this means delay in dealing with such problems or in carrying out needed local projects. More often opposition leads to a compromise measure, with inadequate authority or mandatory provisions as to methods. Not infrequently there is prolonged delay for years, and perhaps definitive denial of the legislation asked; and at times compulsory legislation is enacted against the active opposition of the communities concerned.

(c) Another feature of existing methods is the lack of responsibility for acting on local problems, and the inefficiency which inevitably results from this diffusion of responsibility. Local officials blame the legislature; and legislators criticise the local authorities; and no one is clearly responsible or can be held to account for mistakes and errors either of omission or commission.

(d) Existing legislation on municipal government is so voluminous and so scattered in numerous laws as to make a clear un-

derstanding of the local machinery and powers practically impossible to the ordinary citizen, and difficult even for the legal expert, as is evident by the frequent litigation in the courts to determine disputed points.

(c) These difficulties are increased by the existence of the metropolitan district including Chicago and Cook County, with a population more than twenty times that of any other urban community in the state. The problems of Chicago are much more numerous than those of any other municipal district; and new problems frequently arise there before they appear in other places. But the difference is mainly one of degree, and the same general situation exists with reference to municipal government throughout the state.

Advantages of Municipal Home Rule: To meet these criticisms of existing methods, the following advantages are urged in favor of a system of municipal home rule:

(a) It will give the people of each community an opportunity to have the kind of local government they want, both as to the form of organization and the functions to be exercised.

(b) It will develop public interest in local affairs and aid in the political education of the people, by placing on the citizens of each community the responsibility for devising, discussing and deciding on the organization and functions of local government.

(c) It will enable local communities to deal with local problems more promptly as they arise.

(d) It will make local government more flexible and better adapted to local conditions than under a rigid system of uniform legislation; and will also make a more stable system for each community, in accordance with the wishes of the general body of citizens, than under a regime of measures of special application frequently amended by the legislature at the request of temporary local officials or a few persons having influence with the legislature.

(e) The revision of city charters from time to time will simplify and make more intelligible the laws and machinery of local government for each community.

(f) It will relieve the legislature of the burden of considering local problems, and leave it free to give more attention to questions of state-wide interest.

Objections to Municipal Home Rule: There is little or no open opposition to the general principle of local self-government in the United States. But there are some who believe that the system of local election of local officers and detailed legislation conferring powers on local authorities on which reliance has been placed in

the past, is adequate; and that the proposals for constitutional home rule and local charters are open to serious objections.

A fundamental criticism urged is that a constitutional grant of home rule powers is inconsistent with the sovereignty of the state, and will set up each municipality as an *imperium in imperio*. It seems to be feared that if any home rule powers are recognized, it will prove difficult to establish a limit to such powers even in matters of general state interest.

In reply it may be noted that practically all advocates of municipal home rule ask only for local control of local or municipal affairs, and expressly recognize the need for state control in matters of state concern. No new state can be established within the limits of Illinois without the express consent of the state.

Some more specific objections are not always consistent with each other. It is said, on the one hand, that a system of local charters will introduce more variety and confusion in the machinery and functions of local government; and that there is rather need for establishing a uniform system by general law. On the other hand, it is urged that the method of revising and amending charters by local referendum will make changes more difficult than under present methods; and in support of this, attention is called to several cities (such as San Francisco and Minneapolis) where several proposed local charters have failed to be approved by the people.

To these objections advocates of municipal home rule charters may reply that the home rule system is a satisfactory mean between a rigid, uniform law for all municipalities, and a constantly fluctuating body of special legislation, frequently changed in detail to meet the wishes of a few, but without adequate powers for dealing with local problems.

More serious difficulties are, however, raised by questions as to the application of the general principle of municipal home rule. Accepting the general principle, how are the powers and functions of municipalities to be defined and distinguished from those of the state legislature? Municipalities now exercise two classes of functions—those of a distinctly local character, and those as an agent of the state; but the line between the two has never been clearly defined. Is it possible to define local functions in general terms, or to make an enumeration of powers which will prove adequate for the future? And as to the state functions of municipalities, how can the line be drawn between the sphere of local action and a satisfactory method of state control?

Relation of municipal home rule to the public utilities problem:

The question of municipal home rule as to public utilities has been actively discussed in this state in recent years. Upon pages 396-7 of this pamphlet will be found a statement regarding the present status of this matter in Illinois, and upon pages 404 and 405 will be

found a statement regarding municipal debt limits and their relation to the problem of municipal ownership of public utilities.

If under municipal home rule provisions cities are to be granted power to own their public utilities, such a grant of power is of course worthless unless it is coupled with financial provisions permitting the exercise of the power so granted.

The municipal home rule provisions adopted in Michigan and Ohio expressly grant cities power to determine their own policies with respect to ownership or operation of local utilities, and at the same time relax to some extent municipal debt limits with respect to debts incurred for this purpose (See appendix, Art. VIII, Secs. 23 and 24 of Michigan constitution; and Art. XVIII, Secs. 4, 5, 6 and 12 of the Ohio constitution). Similar provisions also appear in the municipal home rule plan proposed by the National Municipal League, which will also be found in the appendix to this bulletin.

The problem of debt limitation is discussed in Bulletin No. 4, on State and Local Finance, and texts of typical constitutional debt limitations are printed in an appendix to that bulletin. If it is desired to relax municipal debt limitations with respect to debts incurred for income-producing properties, various methods present themselves for the accomplishment of this purpose:

(1) The plan of permitting the issue of bonds which shall be an obligation only against the property of the utility, without increasing the liability of the city. This is the plan which was held invalid under the present constitution of Illinois, in the case of *Lobdell v. City of Chicago*, (227 Ill. 218); and is adopted by the constitutions of Ohio and Michigan.

(2) The plan adopted in New York under which "any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual installments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization installments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization installments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes." A somewhat similar provision is made by the Virginia constitution of 1902.

(3) A combination of the plans noted under (1) and (2) above, such as has been made in the Pennsylvania constitutional provisions to be found in the appendix to Bulletin No. 4.

(4) The Oklahoma plan under which "any incorporated city or town in this state may, by a majority of the qualified property tax paying voters of such city or town, voting at an election to be held for that purpose, be allowed to become indebted in a larger amount than that specified in section twenty-six, for the purpose of purchasing or constructing public utilities, or for repairing the same, to be owned exclusively by such city: Provided, That any such city or town incurring any such indebtedness requiring the assent of the voters as aforesaid, shall have the power to provide for, and, before or at the time of incurring such indebtedness, shall provide for the collection of an annual tax in addition to the other taxes provided for by the constitution, sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty-five years from the time of contracting the same."

These comments are of course based upon the assumption that some limitation upon municipal debts will remain in the constitution.

A Possible Home Rule Program. Based on the study of constitutional provisions and their operation in other states, and on plans presented to the recent Ohio and New York Constitutional Conventions, and provisions approved by the National Municipal League, the following outline for a possible municipal home rule program is presented as representing the views of moderate advocates of municipal home rule who recognize the need for certain limitations and for a suitable measure of state control.

Any constitutional provision on this subject should be as brief as possible, consistent with an adequate grant of municipal authority. But it will be necessary to make definite statements to cover questions which have arisen in other states. On the one hand the extreme brevity and vagueness of the Oregon and Texas provisions should be avoided; and on the other hand details of procedure and extended specific provisions should be omitted, especially at such length as those of California.

As to the character and extent of the powers to be granted to municipalities, there should be:

1. A broad, general grant of power of local or municipal government.
2. In addition, an enumeration of any recognized state functions intended to be conferred, with a clear indication of the extent to which overlapping districts with separate corporate authorities may be consolidated, and the relations between county and city government.

3. A provision that enumerated powers are not to be construed as limiting the general grant, except as specifically provided.
4. The power of municipalities to frame, adopt and amend their own charters.
5. Details of charter procedure are not necessary in the constitution; but if these are provided, they should not be exclusive, and other alternative methods should be authorized by law or in local charters.
6. Some provisions applicable primarily to Chicago and Cook County may be necessary; but such detailed restrictions as those in Section 34 of Article IV of the present constitution (adopted in 1904) should be avoided; and provisions for such matters as city and county consolidation should be framed in general terms so as to meet the needs of other communities in the future.

Limitations and restrictions should include:

1. Clear indications as to how far local charters and amendments will be subordinate to: (a) General laws on matters of state concern not administered by local officials; (b) General laws on matters of state concern administered by local officials; (c) General laws (applicable to all municipalities) dealing with local or municipal affairs. Under (a), the general principle should be that of state control, with express enumeration of any local powers intended to be granted. Under (c) the general rule should be that of municipal authority, with definite specification as to the degree or methods of any state control to be reserved. Under (b) any municipal powers should be enumerated, and there should be definite provisions as to the scope of state and municipal action.
2. Provisions relating to taxation, debt, loaning credit and financial accounts and reports.
3. Provisions authorizing the legislature by general law to provide for the incorporation of new cities and villages; and to provide by general law for the government of cities and villages, which do not wish to make their own charters, under which laws provision may be made for several optional forms of municipal organization, any one of which may be adopted by local referendum.

Provision should also be made for filing an official copy of local charters and amendments in the office of the Secretary of State; and for their publication by the state.

If a municipal home rule policy is to be adopted, constitutional provisions meeting the general requirements above outlined may be based largely on the provisions adopted in Michigan and Ohio, and on those recommended by the National Municipal League. A draft is printed below, which seeks to meet the chief problems at

issue, if the plan is to be adopted. This draft contains no provision regarding municipal debts, although this subject bears close relation to municipal home rule. For a discussion of municipal debts, see pages 421-3 of this bulletin. Provisions regarding special legislation and excess condemnation are included in this draft, although they relate also to matters of more general constitutional policy, and provisions as to them may come elsewhere in a revised constitution.

DRAFT OF MUNICIPAL HOME RULE PROVISIONS.

Section 1. Incorporation—General, Special and Optional Laws. Provision shall be made by general law for the establishment of municipal corporations, and general laws shall be passed for the organization and government of all municipal corporations which do not adopt laws or charters in accordance with other provisions of this article. Laws may also be passed for the organization and government of cities and villages, which laws shall become effective in any city or village only when submitted to the electors thereof and approved by a majority of those voting thereon. Except as otherwise provided in this constitution, the General Assembly shall pass no local or special law in any case where a general law can be made applicable and whether a general law can be made applicable shall be a judicial question. No such local or special law shall take effect until submitted to the electors of the municipality to be affected thereby, and approved by a majority of those voting thereon.

Section 2. Consolidation: Laws may be passed to provide for consolidating in whole or in part in the government of any city or village the powers vested in the town, school, library, park, sanitary, drainage or other local governments and authorities either wholly or partly within the territorial limits of such city or village, and to provide for the assumption, adjustment, and protection of the financial and other rights and obligations of all the governments and authorities affected by such consolidation. Any law providing for the consolidation with any city or village of any such local government or authority being partly within and partly without the territorial limit of such city shall also provide either for the abolition of such local government or authority and the termination of the powers vested therein with respect to the territory without the limits of such city or village, or for the future exercise of the powers of such local government or authority with respect to such territory in such manner as shall be prescribed by law. No law passed in pursuance of the provisions of this section shall take effect until submitted to the electors of the city or village concerned and also to the electors of any local government or authority being partly within and partly without the territorial limits of such city or village and approved by a majority of those voting thereon in each municipality.

Section 3. City and County Consolidation: Any city which has attained a population of 100,000 inhabitants may be authorized by law to assume within its then existing and future territorial

limits all powers and duties which then or thereafter would otherwise be vested by the constitution or by law in counties or in any county officer, and to exercise such powers and duties through such of its officers as may be designated by law or by the charter or ordinances of said city, and the county government and county officers for the territory within the limits of any such city shall thereupon be abolished. Any law passed in pursuance of this section shall provide for the assumption, adjustment and protection of the financial and other rights and obligations of the respective governments or officers affected thereby, and no such law shall become effective as to any city until submitted to the electors of such city and also to the electors of the county or counties concerned and approved by a majority of those voting thereon in each case.

Section 4. Charters: The electors of any city or village shall have the power to frame, adopt and amend a charter for its government, and to amend any existing charter or law relating to its organization and government heretofore granted or passed by the General Assembly. No such charter or amendment thereto and no amendment to any existing charter or law shall take effect until submitted to the electors of such city or village and approved by a majority of those voting thereon, and until a certified copy thereof has been filed as a public record in the office of the Secretary of State. The provisions of this section shall be self-executing; but the manner in which the powers herein granted shall be exercised may be regulated by general law. Until such law shall be passed, the regularly constituted legislative authority of such city or village may by ordinance prescribe the manner in which such powers shall be exercised.

Section 5. Powers: Each city and village shall have and is hereby granted authority to exercise all powers relating to municipal affairs, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the General Assembly to enact general laws applicable to cities and villages in matters relating to state affairs.

The following shall be deemed to be a part of the powers conferred upon cities and villages by this section:

(a) To levy, assess and collect taxes and to borrow money, within the limits prescribed by law; and to make local improvements and to provide for local services by special assessment, by special taxation, or otherwise;

(b) To furnish all local public services; to make local public improvements; to acquire, construct, own, lease, maintain and operate local public utilities, and to grant licenses therefor and regulate the exercise thereof, subject to restrictions imposed by law for the protection of other communities;

(c) Subject to such conditions as may be prescribed by law, to acquire by condemnation or otherwise, property for public purposes;

(d) When appropriating or otherwise acquiring property for public use, to appropriate or acquire in furtherance of such public use an excess over that actually required for the improvement; to sell such excess with such restrictions as shall be appropriate to preserve and protect the improvement made; and to issue bonds to supply funds, in whole or in part, to pay for the excess property so appropriated or otherwise acquired, but bonds so issued shall by their terms be made a lien against the whole or any part of such excess property, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law;

(e) To organize and administer public schools and libraries, subject to laws establishing standards for the state;

(f) To adopt and enforce within its limits local police, sanitary and other similar regulations.

Section 6. Reports: General laws may be passed requiring reports from cities and villages as to their financial transactions and condition, and providing for the examination of the books, accounts and vouchers of all municipal authorities and of public undertakings conducted by such authorities.

Section 7. Elections: Unless otherwise provided by law, all municipal elections shall be conducted by the election officials authorized to conduct general elections for state and county officers.

APPENDIX No. 1. REFERENCES.

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by Mr. Foley and Mr. Franchot.

New York Constitutional Convention, 1915.

Revised Record II, 1161-2176; III, 2904-2982; IV, 3708-3726,
3885-3887.

Ohio Constitutional Convention, 1912.

Proceedings and Debates II, 1430, 1433-1498, 1860-1869.

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brary Commission, 1908.

APPENDIX No. 2. HOME RULE PROVISIONS OF STATE CONSTITUTIONS.

1. Missouri. Article IX—Counties, Cities and Towns:

Sec. 15. In all counties having a city therein containing over one hundred thousand inhabitants, the city and county government thereof may be consolidated in such manner as may be provided by law.

Sec. 16. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election; which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter, signed by the members of such board or a majority of them. Within thirty days thereafter, such proposed charter shall be submitted to the qualified voters of such city, at a general or special election, and if four-sevenths of such qualified voters voting thereat shall ratify the same, it shall, at the end of thirty days thereafter, become the charter of such city, and supersede any existing charter and amendments thereof. A duplicate certificate shall be made, setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the Secretary of State, and the other, after being recorded in the office of the recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter, so adopted, may be amended by a proposal therefor, made by the law-making authorities of such city, published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city, voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the Constitution and laws of the State.

Sec. 17. It shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate, and two houses of legislation, one of which at least shall be elected by general ticket; and in submitting any such charter or amendment thereto to the qualified voters of such city, any alternative

section or article may be presented for the choice of the voters, and may be voted separately, and accepted or rejected separately, without prejudice to other articles or sections of the charter or any amendment thereto.

Sec. 18-25. Relating to the City of St. Louis.

2. Colorado. Article XX.

Secs. 1-5, 7. City and County of Denver.

Sec. 6. Cities of the First and Second Class.

The people of each city or town in this State, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the State of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter or ordinances thereof, including the calling or notice extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the State in conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general state or municipal elections, upon petitions filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the Secretary of State of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms of tenure of all municipal officers, agents and employees;

b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;

c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

d. All matters pertaining to municipal elections in such city or town and to electoral votes therein on measures submitted under the charter of said city or town, which shall be its organic law and

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and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes nonpartisan in character;

e. The issuance, refunding and liquidation of all kinds of municipal obligations including bonds and other obligations of park, water and local improvement districts;

f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessment, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny to such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the State of Colorado, so far as applicable, shall continue to apply to such cities and towns, except in so far as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the City and County of Denver and the Cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the Secretary of State, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the Secretary of State, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and punishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the City and County of Denver.

This article shall be in all respects self-executing. (As amended Nov. 5, 1912).

Sec. 8. Anything in the Constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby

declared to be inapplicable to the matters and things by this amendment covered and provided for.

3. Michigan. Article VIII—Local Government—Cities and Villages.

Sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

Sec. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state.

Sec. 22. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety.

Sec. 23. Subject to the provisions of this constitution, any city or village may acquire, own and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power and transportation to the municipality and the inhabitants thereof; and may also sell and deliver water, heat, power and light without its corporate limits to an amount not to exceed twenty-five per cent of that furnished by it within the corporate limits; and may operate transportation lines without the municipality within such limits as may be prescribed by law: Provided, That the right to own or operate transportation facilities shall not extend to any city or village of less than twenty-five thousand inhabitants.

Sec. 24. When a city or village is authorized to acquire or operate any public utility, it may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law: Provided, That such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such city or village, but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

Sec. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any

public utility franchise which is not subject to revocation at the will of the city or village, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

4. Ohio. Article XVIII—Municipal corporations.

Sec. 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law. (As amended Sept. 3, 1912.)

Sec. 2. General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law. (As amended Sept. 3, 1912.)

Sec. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. (As amended Sept. 3, 1912.)

Sec. 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility. (As amended Sept. 3, 1912.)

Sec. 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission. (As amended Sept. 3, 1912.)

Sec. 6. Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any

transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality. (As amended Sept. 3, 1912.)

Sec. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government. (As amended Sept. 3, 1912.)

Sec. 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein. (As amended Sept. 3, 1912.)

Sec. 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the Secretary of State, within thirty days after adoption by a referendum vote. (As amended Sept. 3, 1912.)

Sec. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appro-

prate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law. (As amended Sept. 3, 1912.)

Sec. 11. Any municipality appropriating private property for a public improvement may provide money therefore in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited shall in no case be levied for more than fifty per centum of the cost of such appropriation. (As amended Sept. 3, 1912.)

Sec. 12. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality, but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure. (As amended Sept. 3, 1912.)

Sec. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books, and accounts of all municipal authorities, or of public undertakings conducted by such authorities. (As amended Sept. 3, 1912.)

Sec. 14. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election. (As amended Sept. 3, 1912.)

5. Oregon. Article IV—Legislative Department.

Sec. 1a. Initiative and Referendum. The referendum may be demanded by the people against one or more items, sections, or parts of any act of the Legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an

act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this Constitution are hereby further reserved to the legal voters of every municipality and district, as to all local, special and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure by the initiative, in any city or town. (As amended June 4, 1906.)

Article XI—Corporations and Internal Improvements.

Sec. 2. Municipalities. Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon. (As amended Nov. 8, 1910.)

6. Texas. Article XI—Municipal Corporations.

Sec. 5. Cities having more than five thousand (5,000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state, or of the general laws enacted by the legislature of this state; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. (As amended Nov. 5, 1912.)

7. New York (Proposed Constitution, 1915). Article XV.

Section 1. It shall be the duty of the legislature by general laws to provide for the organization of new cities in such manner as shall

secure to them the exercise of the powers granted to cities in this article. Except as to cities having more than one hundred thousand population, it shall be the duty of the legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city or incorporated village.

Sec. 2. The legislature may regulate and fix the wages and, except as otherwise provided in this article, the salaries and may also regulate and fix the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof.

Sec. 3. Every city shall have exclusive power to manage, regulate and control its property, affairs and municipal government subject to the provisions of this constitution and subject further to the provisions of the general laws of the state, of laws applying to all the cities of the state without classification or distinction, and of laws applying to a county not wholly included within a city establishing or affecting the relation between such a county and a city therein. Such power shall be deemed to include among others:

(a) The power to organize and manage all departments, bureaus, or other divisions of its municipal government and to regulate the powers, duties, qualifications, mode of selection, number, terms of office, compensation and method of removal of all city officers and employees, including all police and health officers and employees paid by the city, and of all non-judicial officers and employees attached to courts not of record, and to regulate the compensation of all officers not chosen by the electors and of all employees of counties situated wholly within a city except assistants and employees of district attorneys and except officers and employees of courts of record.

(b) The power, as hereinafter provided, to revise or enact amendments to its charter in relation to its property, affairs or municipal government and to enact amendments to any local or special law in relation thereto. A city may adopt a revised charter or enact amendments to its charter or any existing special or local law in relation to any matter of state concerning the management, regulation and control of which shall have been delegated to the city by law, until and unless the legislature, pursuant to the provisions of section four of this article shall enact a law inconsistent therewith. The term "charter" is declared for the purposes of this article to include any general city law enacted for the cities of one class in so far as it applies to such city.

The legislative body of the city may enact such amendments, subject to the approval of the mayor and of the board of estimate and apportionment of the city if any there be; provided, however, that in a city in which any of the members of the board of estimate and apportionment are not elected or in which no such body exists no

such amendment shall be enacted without the assent of two-thirds of all members elected to such legislative body. Every such enactment shall embrace only one subject and shall expressly declare that it is such an amendment. Every amendment which changes the framework of the government of the city or modifies restrictions as to issuing bonds or contracting debts shall be submitted to the legislature in the year one thousand nine hundred and sixteen on or before the fifteenth day of March and in any year thereafter during the first week of its next regular session, and shall take effect as law sixty days after such submission unless in the meantime the legislature shall disapprove the same by joint resolution. Every other such amendment shall take effect upon its enactment as above provided without such submission to the legislature.

The legislature by general law shall provide for a public notice and opportunity for a public hearing by the legislative body of the city concerning any such amendment before final action thereon by it.

At the general election in the year one thousand nine hundred and seventeen, and unless its charter after one revision thereof shall otherwise provide, in every eighth year thereafter either at the general or at a special election, every city shall submit to the electors thereof, the question "shall there be a commission to revise the charter of the city?" and may at the same time choose seven commissioners to revise the city charter in case the question be answered in the affirmative, provided, however, that in the city of New York the number of such commissioners shall be sixteen, nine of whom shall be chosen by the electors of the entire city, two by the electors of the borough of Manhattan, two by the electors of the borough of Brooklyn, and one each by the electors of the boroughs of The Bronx, Queens and Richmond respectively. Such revision when completed shall be filed in the office of the city clerk, and not less than six weeks after such filing shall be submitted to the electors of the city at the next ensuing general election or at a special election to be called for that purpose. If such revision be approved by the affirmative vote of the majority of the electors voting thereon such revision shall be submitted to the legislature during the first week of its session in January of the year following the approval thereof, and if not disapproved by the legislature by joint resolution prior to the first day of July thereafter shall thereupon take effect as law except as therein otherwise specified. The legislature shall by general law provide for carrying into effect the provisions of this paragraph.

Every charter revision and every amendment of any provision of law, enacted pursuant to this section, shall be deposited with the secretary of state and published as the legislature may direct.

Sec. 4. All cities are classified according to the latest federal or state census or enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class,

all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities.

The legislature may delegate to cities for exercise within their respective local jurisdictions such of its powers of legislation as to matters of state concern as it may from time to time deem expedient.

The legislature shall pass no law relating to the property, affairs or municipal government of any city excepting such as is applicable to all the cities of the state without classification or distinction.

The provisions of this article shall not be deemed to restrict the powers of the legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs or municipal government of cities.

Laws affecting cities in relation to boundaries, water supply, sewerage and public improvements, involving the use of territory outside the boundaries of cities, and in relation to the government of cities in matters of state concern and applying to less than all the cities of the state without classification or distinction are defined for the purposes of this article as special city laws. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of each city to which it relates, and within fifteen days thereafter the mayor shall return such bill to the clerk of the house from which it was sent, who, if the session of the legislature at which such bill was passed has terminated, shall immediately transmit the same to the governor with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever, during the session at which it was passed any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city" or "cities" as the case may be; in every such law which is passed without such ac-

ceptance, by the words "passed without the acceptance of the city" or "cities" as the case may be.

Sec. 5. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York, Kings, Queens, Richmond and Bronx, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd numbered year. The terms of office of all such officers elected before the first day of January, one thousand nine hundred and seventeen, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to elections of any judicial officers, except judges and justices of inferior local courts.

8. National Municipal League:

Home Rule Constitutional Provisions, recommended by the Committee on Municipal Program of the National Municipal League.

Section 1. Incorporation and Organization. Provision shall be made by a general law for the incorporation of cities and villages; and by a general law for the organization and government of cities and villages which do not adopt laws or charters in accordance with the provisions of sections 2 and 3 of this article.

Sec. 2. Optional Laws. Laws may be enacted affecting the organization and government of cities and villages, which shall become effective in any city or village only when submitted to the electors thereof and approved by a majority of those voting thereon.

Sec. 3. City Charters. Any city may frame and adopt a charter for its own government in the following manner: The legislative authority of the city may by a two-thirds vote of its members, and, upon the petition of ten per cent of the qualified electors, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage, otherwise, at a special election to be called and held within the time aforesaid; the ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation.

Such candidates shall be nominated by petition which shall be signed by not less than two per cent of the qualified electors, and be filed with the election authorities at least thirty days before such election; provided, that in no case shall the signatures of more than one thousand (1,000) qualified electors be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving the highest number of votes (or if the legislative authority of the state provides by general law for the election of such commissioners by means of a preferential ballot or proportional representation or both, then the fifteen chosen in the manner required by such general law) shall constitute the charter commission and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be at least thirty days subsequent to its completion and distribution among the electors and not more than one year from the date of the election of the charter commission. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provision for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city not less than thirty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon shall become the organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are in conflict therewith. Within thirty days after its approval the election authorities shall certify a copy of such charter to the secretary of state, who shall file the same as a public record in his office, and the same shall be published as an appendix to the session laws enacted by the legislature.

Sec. 4. Amendments. Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided in section 3 for framing and adopting a charter. Amendments may also be proposed by two-thirds of the legislative authority of the city, or by petition of ten per cent of the electors; and any such amendment, after due public hearing before such legislative authority, shall be submitted at a regular or special election as is provided for the submission of the question of choosing a charter commission. Copies of all proposed amendments shall be sent to the qualified electors. Any such amendment approved by a majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in the amendment and shall be certified to and filed and published by the secretary of state as in the case of a charter.

Sec. 5. Powers. Each city shall have and is hereby granted the authority to exercise all powers relating to municipal affairs; and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby

conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature, in matters relating to state affairs, to enact general laws applicable alike to all cities of the state.

The following shall be deemed to be a part of the powers conferred upon cities by this section:

(a) To levy, assess and collect taxes and to borrow money; within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred;

(b) To furnish all local public services; to purchase, hire, construct, own, maintain, and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof;

(c) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement;

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility;

(e) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the state;

(f) To adopt and enforce within its limits local police, sanitary and other similar regulations not in conflict with general laws.

Sec. 6. Reports. General laws may be passed requiring reports from cities as to their transactions and financial condition, and providing for the examination of the vouchers by state officials, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

Sec. 7. Elections. All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

Sec. 8. Consolidation of City and County. Any city of 100,000 population or over, upon vote of the electors taken in the manner provided by general law, may be organized as a distinct county; and any such city and county may in its municipal charter provide for the consolidation of the county, city and all other local authorities in one system of municipal government, in which provision shall be made for the exercise of all powers and duties vested in the several local authorities. Any such consolidated city and

county government shall also have the same powers to levy taxes and to borrow money as were vested in the several local authorities before consolidation.

9. Utah Senate Joint Resolution No. 6 (1919).

A joint resolution proposing an amendment to Section 5 of Article 11 of the Constitution of the State of Utah, relating to municipal corporations.

Be it enacted by the Legislature of the State of Utah, two-thirds vote of all the members elected in the two houses concurring therein:

Section 1. That it is proposed to amend Section 5 of Article XI of the Constitution of the State of Utah, so that the same will read as follows:

Sec. 5. Corporations for municipal purposes shall not be created by special laws. The Legislature by general laws shall provide for the incorporation, organization and classification of cities and towns in proportion to population, which laws may be altered, amended or repealed.

Any city may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may, by two-thirds vote of its members, and upon petition of qualified electors to the number of 10 per cent of all votes cast at the next preceding election for the office of the mayor, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a Commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election. The ballot containing such question shall also contain the names of candidates for members of the proposed Commission, but without party designation. Such candidates shall be nominated in the same manner as required by law for nomination of city officers. If a majority of the electors voting on the question of choosing a Commission shall vote in the affirmative then the fifteen candidates receiving a majority of the votes cast at such election, shall constitute the charter Commission, and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter Commission, which shall be not less than thirty days subsequent to its completion and distribution among the electors and not more than one year from such date. Alternative provisions may also be submitted to be voted upon separately. The Commission shall make provisions for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city, not less than sixty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting

thereon, shall become an organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are now in conflict therewith. Within thirty days after its approval a copy of such charter as adopted, certified by the mayor and city recorder and authenticated by the seal of such city, shall be made in duplicate and deposited, one in the office of the Secretary of State and the other in the office of the City Recorder, and thereafter all courts shall take judicial notice of such charter.

Amendments to any such charter may be framed and submitted by the charter Commission in the same manner as provided for making of charters, or may be proposed by the legislative authority of the city upon a two-thirds vote thereof, or by petition of qualified electors to a number equal to one-tenth of the total vote cast for mayor on the next preceding election, and any such amendment may be submitted at the next regular election, and having been approved by the majority of the electors voting thereon, shall become a part of the charter at the time fixed in such amendment and shall be verified and filed as provided in case of charters.

Each city forming its charter under this Section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulation not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate the service or charges of public utilities so long as such regulation is provided for by general law, nor be deemed to limit or restrict the power of the Legislature in matters of public or general interest, nor those relating to State affairs.

The power to be conferred upon the cities by this Section shall include the following:

(a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services; to purchase, hire, construct, own, maintain and operate, or lease, public utilities, local in extent and use; to acquire by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof subject to the continuing power of regulation of public utilities, their rates and service, by the State, as is now or may hereafter be, provided by general law.

(c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement and to sell or lease such excess

property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of a public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

Séc. 2. The Secretary of State is hereby directed to submit the proposed amendment to the electors of the State at the next general election in the manner provided by law.

Sec. 3. If adopted by the electors of this State, this amendment shall take effect on January 1st, 1921.

Approved March 18, 1919.

10. Wisconsin—Joint Resolution 53 (1919).

Resolved by the Assembly, the Senate concurring, that there be added to article XI of the constitution a new section to read: (Article XI) Section 3b. Any city, in addition to the indebtedness of five per centum authorized by section 3 of this article, may incur an indebtedness not exceeding another five per centum on the value of the taxable property in such city for the purpose of acquiring or constructing street railway properties, or properties for the production, transmission, delivery or furnishing of light, heat, water or power to the public.

Joint Resolution 70 (1919).

Resolved by the Senate, the assembly concurring, That section 3 of article XI of the constitution be amended to read: (Article XI) Section 3. Cities and villages organized pursuant to state law * * * are hereby empowered to determine their local affairs and government subject only to this constitution and to such enactments of the legislature of state-wide concern as shall with uniformity affect every city or every village. The method of such determination shall be prescribed by the legislature. * * * No county, city, town, village, school district, or other municipal corporation shall * * * become indebted * * * to any amount including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, except, that for the purpose of acquiring public service properties an additional indebtedness may be incurred not exceeding another five per centum. Any county, city, town, village, school district, or other municipal corporation incurring any indebtedness as aforesaid, shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same; except that when such indebtedness is incurred in the acquisition of lands by any city * * *

or by any county * * * having a population of one hundred fifty thousand or over, for public, municipal purposes, or for the permanent improvement thereof, the city or county incurring the same shall, before or at the time of so doing, provide for the collection of a direct annual tax, sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within a period not exceeding fifty years from the time of contracting the same.

CONSTITUTIONAL CONVENTION

BULLETIN No. 7

Eminent Domain and Excess Condemnation



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I. SUMMARY.

The purpose of this pamphlet is :

- (1) To present a summary of the constitutional aspects of the law of eminent domain in Illinois.
- (2) To indicate the changes which were introduced in the constitution of 1870.
- (3) To compare the law of eminent domain in Illinois with the law in other states.
- (4) To indicate the questions which have arisen out of existing constitutional provisions and which are likely to come before the convention.
- (5) To discuss recent constitutional changes in the law of eminent domain which have been adopted in other states.

There are, in general, two types of questions likely to come before the Convention: (1) those which have arisen out of existing constitutional provisions, (2) those which involve an extension of the power of eminent domain.

In the first group the following questions may arise: The question of the advisability of amending the general eminent domain clause,

- (1) So that all governmental agencies which possess the power of eminent domain may be permitted to set off benefits to the portion of land not taken for the improvement in diminution of the value of the part of the tract which was taken.
- (2) So that the General Assembly will possess the power of authorizing the condemnation of the rights of private property owners acquired under restrictions as to use imposed upon property dedicated to public uses.
- (3) By eliminating the constitutional guaranty of jury trial on issues of compensation.
- (4) By eliminating the constitutional provision which prevents the General Assembly from authorizing railroad companies to condemn the fee in land taken for railroad tracks.
- (5) So that in all cases it will be certain that the General Assembly may authorize the taking of a fee.

In the second group of constitutional questions the following may arise:

The question of the advisability of authorizing:

- (1) The condemnation of land for the conservation of all natural resources.
- (2) The condemnation and leasing of public utilities by municipalities.
- (3) The condemnation of land for purposes of reclamation.
- (4) The condemnation of land for the purpose of abating slum areas.
- (5) The condemnation of land for the purpose of relieving congestion and in furtherance of housing projects.

- (6) The use of excess condemnation for the purpose of: (a) facilitating the union of lot remnants left by street openings with adjoining property so as to form suitable building sites; (b) protecting an improvement by taking and selling land, bordering on an improvement, under restrictions as to the type, use and location of buildings; (c) recouping the cost of an improvement by taking and selling land bordering on an improvement after it has increased in value.
- (7) Closely related to the question of authorizing excess condemnation for the purpose of protecting an improvement is the question of the advisability of authorizing municipalities to enact zoning ordinances and ordinances prohibiting the erection of billboards in certain districts.

II. CONSTITUTIONAL PROVISIONS RELATING TO EMINENT DOMAIN.

Text of constitutional provisions. The text of the eminent domain clause under the constitution of 1818 was as follows: "Nor shall any man's property be taken or applied to public use without the consent of his representatives in the general assembly, nor without just compensation being made to him."

This language was continued without change in the constitution of 1848. The clause underwent important changes in the constitution of 1870. The general clause now provides: "Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the state, shall be ascertained by a jury, as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken."¹

Separate sections were inserted which deal with the right to condemn land for roads for private and public use, for drainage purposes and with the condemnation of property and franchises of corporations: "The general assembly may provide for establishing and opening roads and cartways, connected with a public road, for private and public use."² "The general assembly may pass laws permitting the owners or occupants of lands to construct drains and ditches for agricultural and sanitary purposes across the lands of others."³ As amended in 1878 the section last quoted reads: "The general assembly may pass laws permitting the owners of lands to construct drains, ditches and levees for agricultural, sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts, and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state, by special assessments upon the property benefited thereby."⁴

The provision relating to the condemnation of corporate franchises reads: "The exercise of power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the General Assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when,

¹ Art. II, Sec. 13.

² Art. IV, Sec. 30.

³ Art. IV, Sec. 31.

⁴ Art. IV, Sec. 31.

in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right."⁵

Changes introduced by Constitution of 1870. It thus appears that the constitutional convention of 1869-70 introduced several important changes in the law of eminent domain, as it existed under the constitutions of 1818 and 1848. A short statement here follows concerning the effect, in general, of these new provisions.

(1) A constitutional right to compensation was given in cases where property has been damaged. Before 1870 the right to compensation was confined to cases of actual takings. A taking was held to mean a taking of the fee, or the taking of an easement or the imposition of an additional servitude upon land an easement in which previously had been acquired, and in addition, included all direct physical injuries to property such as the overflowing of land. Compensation was not required to be paid for non-physical injuries, such as resulted from a change in the grade of streets or from the construction of a railroad upon a street, the fee of which was in the public. The introduction of the damage clause gave a right to compensation in these cases. Stated generally, an owner whose property has been damaged under legislative authority and under color of eminent domain has, under the constitution of 1870, a right to compensation to the same extent as he has against private persons. Illinois was the first state to introduce this change. This example has been followed in about half of the states, most of which are Western states. This change in the law appears to have given satisfaction, for there is to be found but little evidence of a desire to return to the earlier rule, which is still in force in most of the Eastern states, under which property may be damaged without compensation.

(2) The guaranty of the right to compensation for damage to property has had an additional effect in this state which was not a necessary consequence of the introduction of the damage clause. Under the constitutions of 1818 and 1848, in determining the amount of compensation for land actually taken, it was held that elements of special benefit to that part of the claimant's land which had not been taken could be set off against the value of the part taken. Without pointing out any specific reason, the court has held that the effect of the constitution of 1870 was to prevent the set-off of benefits against the value of land taken, although the court has never had the opportunity of passing upon a statute which undertook to restore the rule as it was under the earlier constitutions. In takings by private corporations this rule is followed in the great majority of the states, but in about half the states, either as the result of judicial construction of clauses similar to the Illinois provision, or because of express constitutional provision, set-off of benefits to remaining land against the value of the part taken is allowed in takings by the state and by its agencies.

⁵ Art. XI, Sec. 14.

If all agencies of the state possessed the power of levying special assessments, the rule forbidding set-off would be of little consequence. But in Illinois where cities, towns, villages, park districts and drainage districts are the only agencies which may levy special assessments, there is strong argument in favor of allowing all governmental agencies, such as counties, school and road districts and the Department of Public Works and Buildings, the right to set off benefits against the value of the land taken.

(3) The guaranty of jury trial to determine the amount of compensation came into the constitution of 1870. Under the first two constitutions, the General Assembly had power to and did provide other means for the ascertainment of compensation, for the general constitutional guaranty of jury trial was never construed to apply to eminent domain proceedings. The provision relating to jury trial as to compensation is found only in about one-third of the states, and in some of these only in cases of appeal from a finding of some other body. In about half of these states the provision does not apply to takings by municipal corporations. The provision has been the subject of some criticism in other states.

The state is expressly exempted from this provision in Illinois. This exemption applies to all takings by the state in its corporate capacity, such as takings by the Department of Public Works and Buildings, but does not exempt local governmental agencies.

(4) Under the constitutions of 1818 and 1848 there was no constitutional limitation upon the power of the general assembly to authorize the condemnation of the fee simple title to land. The constitution of 1870 provided that the fee of land taken for railroad tracks should remain in the owner. Such a limitation as this is found in the constitutions of but three other states, Missouri, Oklahoma, and South Dakota. Since the abandonment of the user causes a reversion of the right of possession to the owner of the fee, this provision works a hardship on railroad companies in the event of a necessary removal of their tracks. In cases where the removal of tracks is sought by a city in furtherance of its improvement plan, the provision becomes an obstacle. The elimination of this restriction has been urged by civic bodies in Chicago, interested in the Chicago Plan. If the provision is taken out it would seem that the roads should also be given the right to condemn the fee of lands now occupied by them in which they had previously acquired easements under the existing constitution.

(5) The constitution of 1870 also contains a provision not found in the preceding constitutions, expressly declaring that the franchises and properties of corporations shall be subject to condemnation for public use. The provision also reasserts the guaranty of jury trial in eminent domain proceedings by or against corporations. This provision is found in about one-third of the states. Inasmuch as it has been held that the power of eminent domain cannot irrevocably be granted away and that a breach of an attempt to do so is not an impairment of the obligation of any contract, this provision adds no power to that possessed under the general eminent domain clause.

While the Supreme Court of Illinois has definitely stated that the clause adds nothing, its elimination might possibly be construed as manifesting a real intention to affect the law in some way.

(6) The convention of 1870 also extended the meaning of the term "public use" to include two purposes, primarily private, by inserting provisions authorizing the condemnation of land for roads for private and public use, and for drainage purposes. Under the prior constitution, it had been held that the General Assembly could not authorize the taking of land for private rights of way, and probably would have held, had the question been presented, that the taking of land for drainage purposes was not a public use. Provisions of a similar character relating to roads are found in about one-third of the states. The drainage provision is also found in about the same number of states. The drainage section was amended in 1878 so as to permit the construction of levees, the construction of drains for sanitary and mining purposes, the organization of drainage districts and the levying of special assessments to meet the cost of such works.

III. CONSTRUCTION OF THE EMINENT DOMAIN CLAUSES.

What constitutes a public use. Property cannot be taken except for public use. To constitute a public use the property must be employed so as to render a substantial benefit to a relatively large group of persons.¹ There are four types of cases. (1) Property may be taken by the state or by its public or municipal corporations for the purpose of housing the various departments and agencies of government.² (2) Property may be taken for the purpose of enabling the state or its agencies to carry out its functions of government, such as would be in the interest of trade, commerce, navigation, public health, safety and general welfare. Accordingly land may be taken for the improvement of navigation,³ for jails,⁴ public hospitals, public schools, public parks,⁵ roads and streets,⁶ forest preserves,⁷ and for the carrying on of any business legally conducted by the state or by its agents.⁸ The Attorney General has given an opinion that the state has power to take over the coal mines in times of emergency such as were brought on by war conditions.⁹ (3) Property may be taken by private corporations if the use to which the property is to be devoted is of a character such that the public have the legal rights to demand some service. Land may under authority of statute be taken by railroad companies and other public utilities to enable them to carry on such business.¹⁰ Public grist mills come within the rule.¹¹ (4) In a limited number of cases, under express constitutional provisions, land may be taken for uses which in the absence of constitutional provision may have been regarded as private, such as for roads for public and private use¹² and for drainage purposes.¹³

But few cases have been presented in this state where the court has ruled that a use is not public. It has been held, in the following cases, that the proposed use was not public: the taking of a right of way by a coal mining company,¹⁴ the taking of land for a mill of which

¹ C. C. C. & St. L. Ry. Co. v. Drainage District, 213 Ill. 83 (1904).

² Deneen v. Unverzagt, 225 Ill. 378 (1907).

³ Beidler v. Sanitary District, 211 Ill. 628 (1904). Opinions of the Attorney General, 1908, p. 85.

⁴ County of Mercer v. Wolff, 237 Ill. 74 (1908).

⁵ Village of Depue v. Bauschenbach, 273 Ill. 574 (1916).

⁶ Chicago v. Lord, 276 Ill. 549, 277 Ill. 407 (1916, 1917).

⁷ Perkins v. Commissioners of Cook Co., 271 Ill. 449 (1916).

⁸ Helm v. Grayville, 224 Ill. 274 (1906).

⁹ Opinions of the Attorney General, 1917-18, p. 606.

¹⁰ L. S. & M. S. R. R. Co. v. C. & W. I. R. R. Co., 97 Ill. 506 (1881).

¹¹ Gaylord v. Sanitary District, 204 Ill. 576 (1903).

¹² Const. 1870, Art. IV, Sec. 30.

¹³ Const. 1870, Art. IV, Sec. 31.

¹⁴ Scholl v. German Coal Co., 118 Ill. 427 (1887).

the public had no right to demand a service,¹⁵ under the constitution of 1848, the taking of land for a private road,¹⁶ and the taking of land by a railroad for a side track to a manufacturing plant for the sole purpose of transporting the products of the plant.¹⁷

Condemnation of property already devoted to public use. It is well established that property already devoted to public use is still subject to condemnation for other public uses. The question of the propriety of authorizing the condemnation of such property is primarily a legislative question, but is subject to judicial review.¹⁸ Where the legislative grant of the power of eminent domain is general, the condemnation of property already devoted to public use will be upheld only when the court finds that the new use will be a different use, not necessarily different in kind but in degree, by which the public obtains some additional advantage. Extensions of streets across railways,¹⁹ and railways across streets,²⁰ and across other railways²¹ constitute new uses. A railroad may condemn land belonging to another railroad which is not devoted by the latter to railroad purposes,²² or even a part of the tracks of another railway for a short distance,²³ but cannot condemn a considerable portion of the right of way.²⁴ A city sewer may be constructed through land devoted to public uses by a sanitary district.²⁵ But a general grant of the power of eminent domain to a city does not authorize the condemnation, by the city, of a strip of land through a county poor farm,²⁶ nor the condemnation of a part of a library building for a city street.²⁷ The taking of property already devoted to public use does not impair the obligation of any contract.²⁸

There is one special problem which has arisen in this state with reference to the power to condemn land dedicated to public use. A portion of what now comprises Grant Park in the city of Chicago was dedicated by the Canal Commissioners to the public. The plat designated the lake front strip as "open ground, no buildings". Another portion was dedicated by the United States and the plat similarly stated "public grounds forever to remain vacant of buildings." These dedications were duly accepted by the City of Chicago.

¹⁵ *Gaylord v. Sanitary District*, 204 Ill. 576 (1903).

¹⁶ *Nesbit v. Trumbo*, 39 Ill. 110 (1866). Art. IV, Sec. 30, Constitution of 1870, expressly allows the taking of land for roads for private and public use.

¹⁷ *C. & E. I. v. Wiltse*, 116 Ill. 449 (1886).

¹⁸ *People v. Walsh*, 96 Ill. 232 (1880); *L. S. & M. S. R. R. Co. v. C. & W. I. R. R. Co.*, 97 Ill. 506 (1881).

¹⁹ *C. R. I. & P. R. R. Co. v. Lake*, 71 Ill. 333 (1874); *C. & A. R. R. Co. v. Pontiac*, 169 Ill. 155 (1897).

²⁰ *M. City Ry. Co. Chi. W. D. Ry. Co.*, 87 Ill. 317 (1877).

²¹ *E. St. L. & C. Ry. Co. v. B. C. Ry. Co.*, 159 Ill. 544 (1896); *I. C. R. R. Co. v. C. B. & N. R. R. Co.*, 122 Ill. 473 (1887).

²² *W. D. Ry. Co. v. El. R. R. Co.*, 152 Ill. 519 (1894).

²³ *L. S. & M. S. R. R. Co. v. C. & W. I. R. R. Co.*, 97 Ill. 506 (1881).

²⁴ *Central Ry. Co. v. Fort Clark H. Ry. Co.*, 81 Ill. 523 (1876).

²⁵ *Chicago v. Sanitary District*, 272 Ill. 37 (1916).

²⁶ *Edwardsville v. Madison*, 251 Ill. 265 (1911).

²⁷ *Moline v. Greene*, 252 Ill. 475 (1911).

²⁸ *Hyde Park v. Cemetery Association*, 119 Ill. 142 (1886); *West River Bridge Co. v. Dix*, 6 How. (U. S.) 507; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S., 685.

The general assembly of Illinois subsequently authorized the condemnation of the easements thus created and possessed by the owners of the property abutting on the park, and authorized the erection therein of a museum. The court held²⁹ that the General Assembly had no power to authorize the condemnation of these easements because the land had been accepted under these restrictions, although the general holding is that property already subjected to public use can be condemned for other uses, and that the state cannot irrevocably barter away its power of eminent domain, and that the breach of any agreement not to exercise the power of eminent domain does not impair the obligation of any contract.³⁰ The decision was not expressly based upon the ground that the proposed new use was not public but was based upon the broad proposition that the state, having accepted the land with the restrictions, could not rid itself of them for any purpose. Three of the members of the court dissented. The precise point has apparently not arisen elsewhere. In view of the probability that the needs of the state may often demand a change in the use of property dedicated under restrictions, this decision may prove of difficulty.

Power to condemn fee in land. Under existing statutes in Illinois it appears to be true that the power of eminent domain may not be exercised by local communities for the purpose of condemning the fee of land. Several of the decisions upon this matter seem to squint at a notion that there is a constitutional protection in the individual not to be deprived of a fee if less than a fee may be regarded as sufficient to meet the public need. Some constitutional basis for this view seems to be implied in the case of *Tacoma Safety Deposit Co. v. Chicago*,³¹ although the real basis of the court's decision will be found on page 197: "This property was condemned in 1851, and at that time there was no statute in force in this state expressly authorizing a city to take the fee of real estate for street purposes, and we think the law is clear that before the city could acquire the fee to said real estate for street purposes, it must appear there was a statute in force which, by its terms, or by necessary implication, authorized the city to take said property in fee for the purpose of widening said street".

A similar statement will be found in the case of *Miller v. Commissioners of Lincoln Park*,³² and in the case of *Lockie v. Mutual Union Telegraph Co.*³³

The actual decisions so far upon this matter have been based upon purely statutory grounds, and have construed a right to condemn conferred by statute as a right to condemn a user only. Of course, it

²⁹ *South Park Commissioners v. Ward*, 248 Ill. 299 (1910). Dictum to the contrary in *L. & N. R. R. Co. v. Cincinnati*, 76 Ohio St. 481.

³⁰ *Village of Hyde Park v. Cemetery Association*, 119 Ill. 142 (1886); *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685; *West River Bridge Co. v. Dix*, 6 How. 507.

³¹ 247 Ill. 192 (1910).

³² 278 Ill. 400 at page 407 (1917).

³³ 103 Ill. 401 (1882).

is possible that the court, having taken this view, might at some time if the constitution is left unchanged, take the further step of saying that the words "public use" are to be limited to the taking of only such an interest in the property as is essential for the purpose. On the analogous questions of the necessity for a particular taking and of the amount of land needed, it has been held that these questions are for the court, although the condemning authority possesses a wide discretion in these matters.³⁴ In other states it is held that the fee may be taken.³⁵

The only express constitutional limitation in Illinois upon the power of the general assembly to authorize the taking of the fee in lands is the unusual provision, found in Art. II, Sec. 13, which declares that the fee of lands taken for railroad tracks shall remain in the owner. This restriction upon railroads is found only in the constitutions of three other states, Missouri, Oklahoma and South Dakota.

It has been urged that this restriction upon railroads is unjust because the effect of an abandonment of an easement or of its use for a purpose other than the one for which it was condemned causes a reverter³⁶ to the owner or to his heirs. In its report on excess condemnation, the Chicago Bureau of Public Efficiency in urging the elimination of this clause, states:

"There is a public interest in this matter in connection with city planning. One of the aims of Chicago City planners is to secure a rearrangement of railroad terminals in Chicago which would permit of the abandonment for railroad use of considerable railroad property. It would seem that the constitution should provide that the railroads, after having made use of property in good faith for railroad purposes for a specified number of years, should retain title and have the power to sell it and retain the proceeds in case the city authorities agree and it is no longer needed for railroad purposes."

Taking and damaging of property. The constitutions of 1818 and 1848 required the payment of compensation only when property was taken or applied to public use. The word "applied" seems not to have been construed, nor to have added anything to the word "taken". The taking of title or of an easement clearly came within the protection of the clause. Additional servitudes upon land constituted a taking. The typical cases arose where a city street, the fee of which was in the abutter, was used for railroad purposes,³⁷ or for telegraph or telephone lines.³⁸ Street railways were held to be but a natural use of the street and therefore did not constitute an additional servitude.³⁹ Where the fee of the street was in the city, the property

³⁴ *Chicago v. Lehman*, 262 Ill. 468 (1914).

³⁵ *Attorney General v. Williams*, 174 Mass. 476; *Dingley v. Boston*, 100 Mass. 544; *Fairchild v. St. Paul*, 46 Minn. 540.

³⁶ *Bell v. Mattoon Waterworks Co.*, 245 Ill. 544 (1910); *Sullivan v. Atchinson*, etc. R. R. Co., 251 Ill. 108 (1911); *C. & E. I. R. R. Co. v. Clapp*, 201 Ill. 418 (1903).

³⁷ *I. B. & W. R. R. Co. v. Hartley*, 67 Ill. 439 (1873); *Wilder v. Aurora Traction Co.*, 216 Ill. 493 (1905).

³⁸ *Board of Trade Tel. Co. v. Barnett*, 107 Ill. 507 (1883); *Burrall v. Am. Tel. Co.*, 224 Ill. 266 (1906).

³⁹ *C. B. & Q. R. R. Co. v. West Chicago Street R. R. Co.*, 156 Ill. 255 (1895).

could be put to any use without compensating abutting owners for resulting damage sustained by them.⁴⁰ For injuries to rights in land, which did not constitute a technical taking, there was a right to compensation whenever the invasion of the natural right produced a direct and physical injury to property, such as the overflowing of the owner's land.⁴¹ In many jurisdictions the word "taken" was given a more restricted meaning. Under the Illinois rule the property owner was given some right to compensation for consequential damage, but since this right was limited to direct and physical injuries, his rights were not coextensive with his rights against private persons at common law. There was one apparent exception to the rule that consequential injuries to property did not constitute a taking. Where a part of a tract was taken and the part not taken was injuriously affected, it was held that the entire injury, measured by the difference between the fair cash market value of the part not taken before and after the taking, plus the fair cash market value of the parcel taken, was a taking.⁴² This rule has remained unchanged under the constitution of 1870.⁴³

The primary reason for a change in the Constitution of 1870 was to give the owner, no part of whose land was taken, a right to recover compensation for injuries of a non-physical character. This change was accomplished by the introduction of the word "damage". Illinois was the first state to adopt this change. As the provision now reads: "Private property shall not be taken or damaged for public use without just compensation."

Provisions of like nature have now been adopted in Arizona, Arkansas, California, Colorado, Georgia, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. In some states where the constitution does not provide for a right to compensation for the damaging of property the right is conferred by statute. In Massachusetts this practice has prevailed for many years. In some cases the statutory right to damages goes beyond the requirement of any constitutional provision, as for example, in Massachusetts and New York, where land is taken and submerged for the purpose of creating a water supply, statutes authorize the recovery of damage to business conducted on land taken.⁴⁴ In such cases the prevailing rule is that the owner is limited to the market value of his land.⁴⁵

Some difficulty has been encountered in defining the word "damage" in this new constitutional sense. The court had three alternatives open: (1) It might have held that the effect of the change was to impose the same degree of liability for damage inflicted under legislative authority, as had always been imposed at common law upon

⁴⁰ *Moses v. P. R. R. Co.*, 21 Ill. 516 (1859); *Murphy v. Chicago*, 29 Ill. 279 (1862).

⁴¹ *Nevins v. Peoria*, 41 Ill. 502 (1866).

⁴² *State v. Evans*, 3 Ill. 208 (1840); *Curry v. Mt. Sterling*, 15 Ill. 320 (1853).

⁴³ *W. St. L. & P. R. R. Co. v. McDougall*, 126 Ill. 111 (1888).

⁴⁴ *Earle v. Commonwealth*, 180 Mass. 579. In re Board of Water Supply 142 N. Y. S. 83. Laws 1909 N. Y. Ch. 56, Sec. 7.

⁴⁵ *Braun v. West Side El. R. R. Co.* 166 Ill. 434 (1896).

private individuals⁴⁶ for damaging property in a similar manner. (2) The court might have adopted the rule, which had been applied and still does apply to partial takings, and defined "damage" to mean the difference between the fair cash market value of the property before and after the infliction of the damage.⁴⁷ But the court adopted neither of these rules. The first was rejected because it did not include some kinds of injuries for which there was no common law precedent and the second because this rule would have required payment of compensation for damage of a general character. A middle ground was selected which has been followed rather generally throughout the country. This rule is that compensation is allowed in all cases where there has been some physical disturbance of a right, either public or private, which one enjoys in connection with his property and which gives to it additional value, by reason of which disturbance the owner has sustained a special damage with respect to his property which was not sustained by the public generally.

A railway⁴⁸ or tunnel⁴⁹ which shuts off access to a street constitutes such special damage. This construction includes all cases actionable at common law, but the non-existence of common law liability does not in itself defeat the constitutional right to compensation.⁵⁰ Speculative damage,⁵¹ general damage,⁵² such as the community as a whole may sustain, damage which does not arise out of the violation of rights, such as the destruction of switch connections to which the claimant had no right,⁵³ and damage caused by the exercise of the police power,⁵⁴ are not recoverable. The ordinary police regulations which either place a restriction upon the use of property, such as for billboard purposes, or which require the expenditure of money in the interest of the public welfare, such as for making railroad crossings safe, without compensation, are not contrary to the principle adopted by the introduction of the damage clause in the eminent domain provision, because in these cases the damage is of a general and not of a special character, and general damage is not at any time recoverable.

Where property is destroyed under circumstances more nearly resembling special damage, as where animals are killed⁵⁵ or buildings destroyed,⁵⁶ to prevent the spread of disease, the absence of a constitutional right to compensation is somewhat contrary to the principle embodied in the damage clause of the eminent domain provision. Similarly under the drainage rule of this State, whereby the upper proprietor has an easement of drainage over the lower land of all surface waters that naturally flow in that direction, even though the flow is increased by improved drainage on the upper land, it has been held

⁴⁶ This is the English rule and seems to have been adopted in Arkansas, California, Colorado, Georgia, Texas, Washington and West Virginia.

⁴⁷ This construction seems to be placed upon the damage clause in Nebraska and Texas.

⁴⁸ *Rigney v. Chicago*, 102 Ill. 64 (1881) reviews the earlier cases and lays down the rule which has been followed in subsequent cases.

⁴⁹ *Barnard v. Chicago*, 270 Ill. 27 (1915).

⁵⁰ *Aldis v. Union El. R. R. Co.*, 203 Ill. 567 (1903).

⁵¹ *C. & M. El. Ry. Co. v. Mawman*, 206 Ill. 182 (1903).

⁵² *Frazer v. Chicago*, 186 Ill. 480 (1900); *I. C. R. R. Co. v. Trustees of Schools*, 212 Ill. 406 (1904).

⁵³ *Otis Elevator Co. v. Chicago*, 263 Ill. 419 (1914).

⁵⁴ *C. & N. W. Ry. Co. v. Chicago*, 140 Ill. 309 (1892).

⁵⁵ *Pearson v. Zehr*, 138 Ill. 48 (1891).

⁵⁶ *Sings v. Joliet*, 237 Ill. 300 (1908).

that a railroad company, as a lower proprietor, must bear the expense of construction of new bridges made necessary by improved drainage above.⁵⁷ The destruction of property under the police power is not a technical taking nor is it damage, because the property is not used by the agency which destroyed it and because, in this kind of case, it may be said that no legal right has been infringed. In such cases property becomes subservient to the public welfare. Any constitutional requirement that damages be paid in such cases might have the effect, in the end, of preventing any action being taken at all where the public welfare required action. A constitutional right to compensation to owners of lower lands for damages caused by improved drainage above would affect a change in a well-established rule of property in this State which has proved, on the whole, to be a proper one. The State is not prevented from making voluntary compensation where it sees fit.

Measure of compensation. The constitutions of 1818 and 1848 each required that "just compensation" be paid for property taken and since the constitution of 1870, this requirement applies also to the damaging of property. In the constitutions of some states the words "adequate", "reasonable", "full", "due", or "fair" are employed, but it does not appear that the use of these words has led to any different construction. As regards a taking, there are three situations: first, where the whole of a tract is taken; second, where a part of a tract is taken and the parcel not taken is injuriously affected; third, where a part is taken, and the part not taken is specially benefited.

(1) Where the whole of a tract is taken, the measure of compensation is the fair cash market value of the property taken. This has been the rule under all three constitutions.⁵⁸

(2) Where a part of a tract is taken and the parcel not taken is injuriously affected, the owner is entitled to the fair cash market value of the part taken plus the difference between the fair cash market value of the part not taken before and after the taking. This rule has been followed under the constitutions of 1818,⁵⁹ 1848,⁶⁰ and 1870.⁶¹

(3) Where a part of a tract is taken and the part not taken has been specially benefited, under the constitutions of 1818⁶² and 1848,⁶³ the rule was that the amount which represented the special benefits could be deducted from the fair cash market value of the part taken, and the remainder would be the amount of compensation to which the

⁵⁷ *C. B. & Q. Ry. Co. v. People*, 212 Ill. 103 (1904); 200 U. S. 561. There is a right to compensation if the water turned upon the railroad company is not such as would in a state of nature ultimately reach its property. *People v. C. & E. I. R. R. Co.*, 262 Ill. 492 (1914); *East Side District v. E. St. L. & C. Ry. Co.*, 279 Ill. 123 (1917).

⁵⁸ *State v. Evans*, 3 Ill. 208 (1840); *Haslam v. G. & S. W. R. R. Co.*, 64 Ill. 353 (1872); *Price v. Union Drainage District*, 253 Ill. 114 (1911).

⁵⁹ *State v. Evans*, 3 Ill. 208 (1840).

⁶⁰ *Alton R. R. Co. v. Carpenter*, 14 Ill. 190 (1852).

⁶¹ *W. St. L. & P. R. R. Co. v. McDougall*, 126 Ill. 111 (1888).

⁶² *State v. Evans*, 3 Ill. 208 (1840).

⁶³ *Alton R. R. Co. v. Carpenter*, 14 Ill. 190 (1852); *Curry v. Mt. Sterling*, 15 Ill. 320 (1853).

owner was entitled. If the special benefits to the part not taken equalled or exceeded the market value of the part taken, the owner received no pecuniary compensation. The eminent domain act of 1852 changed this rule and forbade the set-off of special benefits against the value of the part taken and the constitutionality of this act was apparently not questioned.⁶⁴ Then came the constitution of 1870 with its new provision requiring the payment of compensation when property had been damaged under color of eminent domain. The primary object of this clause was to give the property owner a right to compensation when no part of his property had been taken, because he was adequately protected when a part had been taken, for in this case, he was paid whatever damage was inflicted upon his remaining land. There is nothing to show that the damage clause was intended to affect any other situation than that where no property was taken. Nevertheless the court held that the effect of the new eminent domain clause was to prevent the set-off of benefits to remaining land against the value of the parcel taken. No reason was given for this decision, the court merely saying: "It was evidently the intent of the framers of the article * * * that the full value of land taken should be paid in money, alone, disregarding all benefits and advantages that might result to that portion of the owner's land not taken. Even if the Act of 1873 would bear the construction contended for (i.e. its similarity to the Act of 1845 under which special benefits were set off against total compensation) the provisions of the constitution must prevail regardless of any act of the legislature. The right to be paid for land condemned, in money, and not in benefits, is guaranteed by the constitution, which it is not within the power of the legislature to take away."⁶⁵ This rule has been followed without further question⁶⁶ and is applied both to takings by private corporations and by agencies of the state.

This is the rule in Colorado, Georgia, Idaho, Louisiana, Maryland, Montana, Nebraska, New York, Oregon, Rhode Island, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. The reason usually stated for this rule is that the constitution requires payment of compensation to be in money. Benefits therefore cannot be used as a medium of payment, but perhaps behind that lies the notion that anticipated benefits do not materialize even though they be found to exist at the time of trial. The contrary rule obtains in Connecticut, Delaware, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, North Carolina, Pennsylvania, and Vermont, and in the United States Supreme Court, under which benefits to the part not taken may be set off against the value of the part taken.

In the remaining states—Arizona, Arkansas, California, Florida, Iowa, Kansas, North Dakota, Ohio, Oklahoma, South Dakota, and Washington—there are special constitutional provisions which

⁶⁴ *Hayes v. Ottawa, etc. R. R. Co.* 54 Ill. 373 (1870); *Peoria etc. R. R. Co. v. Laurie*, 63 Ill. 264 (1872).

⁶⁵ *Carpenter v. Jennings*, 77 Ill. 250 (1875).

⁶⁶ *Harwood v. Bloomington*, 124 Ill. 48 (1888); *People v. Burrall*, 258 Ill. 509 (1913).

forbid the setting off of benefits to land not taken against the value of the part taken. In Iowa and Oklahoma these prohibitions apply, apparently, to taking both by agencies of the state and by private corporations, but in the other states enumerated, the prohibition against the set-off of benefits applies only to takings by private corporations. In these states, therefore, when property is taken by an agency of the state, benefit to the remaining parcel may be set off. In California, municipal corporations only were allowed to set off benefit against damage, but by an amendment adopted in 1918, the right to set-off benefits was extended to counties. It thus appears that in about half the states, agencies of the state in taking property for public improvements may set off special benefits to the part not taken against the value of the part taken.

The rule in Illinois, forbidding the set-off of benefits to the part not taken against the value of the part of the lot taken, does not prevent the levying of special assessments against the remaining parcel where the condemning authority has the power of levying special assessments, but in Illinois the power to levy special assessments for the construction of local improvements is conferred only upon cities, towns, villages, park districts and drainage districts.⁶⁷ The result is that in all cases where property is taken by the State or by any of its agencies, which agencies do not have the power of levying special assessments, such as counties, school districts, or the Department of Public Works and Buildings, property taken must be paid for in full without regard to special benefits to the part of the lot not taken. The effect of the rule forbidding the set-off of benefits, when considered in connection with the provision relating to special assessments, is to discriminate against those agencies which do not possess this power. It would seem that all governmental bodies which possess the power of eminent domain should have the power to set-off special benefits against damage or to accomplish substantially the same purpose by special assessments. If the rule were so as to allow the set-off of benefits, it would then be in accord with the general rule which has always been in force in this state, that as regards the part not taken, viewed separately, special benefits to this parcel may be taken into consideration in determining whether the part not taken has been specially damaged or specially benefited, i.e., in this case benefits are set off against special damage.⁶⁸ The allowance of set-off also would be in harmony with the principle of special assessments, but would not be open to all the objections which might be urged against a grant of the power of special assessments to all governmental agencies of the state, for in no case could the amount of the set-off exceed the value of the land taken.

⁶⁷ Constitution, Art. IX, Sec. 9. Park districts may make local improvements by special assessments. *Van Nada v. Goedde*, 263 Ill. 105 (1914); Art IV, Sec. 31; Drainage districts may levy special assessments.

⁶⁸ *State v. Evans*, 3 Ill. 208 (1840); *Curry v. Mt. Sterling*, 15 Ill. 320 (1853); *West Side Elevated Ry. Co. v. Stickney*, 150 Ill. 362 (1894); *Brand v. Union Elevated Ry. Co.*, 258 Ill. 133 (1913), 238 U. S. 586; *Oil Belt Ry. Co. v. Lewis*, 259 Ill. 108 (1913).

Medium and time of payment of compensation. As regards the medium of payment the term "just compensation" has been construed to require a payment in money.⁶⁹ As above stated, this rule applies always in cases of actual takings. The owner is entitled to be paid in money for the land taken irrespective of benefit to remaining land. Damage to property must also be paid for in money, with the qualification, that elements of special benefit may be set off against elements of special damage to the land, merely for the purpose of ascertaining whether the tract has been specially benefited or specially damaged.⁷⁰ In a few states the requirement that compensation be made in money is expressly provided for in the Constitution.⁷¹ In Illinois there has never been any such provisions.

With respect to the time of payment, none of the constitutions of Illinois has contained any express requirement that compensation be made before the taking, but the courts have held, as a matter of construction, that actual payment was a condition precedent to the right to take.⁷² Accordingly an attempted taking not preceded by payment will be enjoined,⁷³ although it is held that after compensation has been ascertained in the condemnation proceedings, the condemning authority may enter into the temporary possession of the premises upon the giving of the required appeal bond.⁷⁴ The Attorney General has rendered an opinion that the requirement of prepayment does not apply to takings by the state in its corporate capacity and that in such a case an appropriation by the legislature probably would be sufficient.⁷⁵

Prepayment is not required in most states, the courts construing Constitutional provisions, similar to the Illinois provision, as merely requiring the giving of adequate security for payment. In takings by the state or by any of its agents the courts of other states generally hold that the owner possesses adequate security if he has a right to sue the condemning authority. In takings by private corporations, the right to bring a suit is held to be insufficient. In this case the courts require either a deposit of money in court or the giving of a bond approved by the court. The constitutions of several states contain express provisions relating to the time of payment. Some require prepayment, others require prepayment or security.⁷⁶ The constitution of California, which has expressly required prepayment or deposit in all cases, was amended in 1918 by exempting municipal corporations and counties from this provision.

With respect to the damaging of property the rule in Illinois, as well as in other states, is that damage may be inflicted without

⁶⁹ *Caldwell v. Highway Commissioners*, 249 Ill. 366 (1911).

⁷⁰ *West Side Elevated Ry. Co. v. Stickney*, 150 Ill. 363 (1894).

⁷¹ Ohio, Texas, Vermont, Arkansas, Kansas, South Carolina, Arizona, California, North Dakota.

⁷² *Caldwell v. Highway Commissioners*, 249 Ill. 366 (1911).

⁷³ *Commissioners v. Durham*, 43 Ill. 86 (1867).

⁷⁴ *Mitchell v. I. & St. L. R. R. Co.*, 68 Ill. 286 (1873).

⁷⁵ *Opinions*, 1917-18, p. 72.

⁷⁶ Alabama, Arizona, Arkansas, California, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Oregon, South Carolina, South Dakota, Texas, Washington, West Virginia.

making payment in advance. An injunction will not be granted to restrain the infliction of damage.⁷⁷ The reason for the rule is that the amount of the damage can not be determined before it has been sustained. In a few states payment must be made before the damage occurs.⁷⁸ The express requirement of prepayment, inserted in the eminent domain provision containing the damage clause, may, therefore, have the effect of making mandatory the issuance of an injunction to restrain the infliction of damage until payment is made. There is one important type of case where there is a conflict of authority as to the right to obtain an injunction. Where a railway is constructed upon a public highway the fee of which is in the public, the rule in Illinois⁷⁹ and in most states is that an injunction will not be granted to restrain the infliction of the damage, because the injury to the abutting property owners does not constitute a taking, but under the New York⁸⁰ constitution, which does not contain the damage clause, the rule was laid down, in the elevated railroad cases, that an injunction will be granted to restrain the construction of the road until compensation is paid—on the theory that the abutting owners had an easement of light and air in the street. Thus the construction of the road amounts to a taking of these easements. In states where the damage clause is found, the abutters on streets, the fee of which is in the public, possess natural rights of access only, interference with which constitutes damage, but does not constitute a taking.

Province of the courts, the legislature and the condemning authority. There has never been any provision in the constitutions of Illinois which expressly makes the question of what constitutes a public use one for judicial determination, but this result has been reached by construction. The constitutions of a few states contain provisions which expressly make the question of what constitutes a public use a question for the courts.⁸¹ The question of the propriety of delegating the power of eminent domain is for the legislative branch.⁸² The question of the necessity for a particular taking and the question of the amount of land needed is, in the first instance, for the condemning authority, which is vested with a relatively wide discretion, but its judgment is subject to review by the courts for an abuse of discretion.⁸³ The questions of necessity are not for the jury. The constitutions of Illinois have never provided that the ne-

⁷⁷ Childs v. Chicago, 279 Ill. 623 (1917); Bond v. Penn. Co. 171 Ill. 508 (1898); Stetson v. C. R. R. Co., 75 Ill. 74 (1874); Doane v. Lake St. El. Ry. Co., 165 Ill. 510 (1897); Aldis v. Union El. Ry. Co., 203 Ill. 567 (1903).

⁷⁸ McElroy v. Kansas City, 21 Fed. 257; Brown v. Seattle, 5 Wash. 35; Searle v. Leod, 10 S. D. 312; Sala v. Pasadena, 162 Calif. 714; Donovan v. Albert, 11 N. D. 289; Delaware Co. Appeal, 119 Pa. 159.

⁷⁹ Doane v. Lake St. El. Ry., 165 Ill. 510 (1897).

⁸⁰ Story v. N. Y. El. Ry. Company, 90 N. Y. 122.

⁸¹ Provisions of this character are to be found in the constitutions of Arizona, Colorado, Mississippi, Missouri, Washington, Oklahoma.

⁸² Chicago v. Lehman, 262 Ill. 468 (1914).

⁸³ Chicago v. Lehman, 262 Ill. 468 (1914); Depue v. Banschbach, 273 Ill. 574 (1916).

cessity of a proposed taking should be determined by any authority other than the legislature and the condemning authority, although in the convention of 1869-70⁸⁴ the majority of the committee on roads reported in favor of a provision which required the determination of the necessity for the taking of land for private roads to be by jury. A few states have provided, however, that in certain cases the jury shall determine the necessity for a particular taking.⁸⁵ The fixing of the amount of compensation is in Illinois for the jury subject to review by the courts as in all other jury cases, except in takings by the state, where other agencies may be authorized by the general assembly to determine the amount of compensation.

The guaranty of jury trial. Trial by jury on issues of compensation in condemnation cases was not guaranteed by the constitutions of 1818 and 1848. The Bill of Rights of the constitution of 1818 did provide, "That the right of trial by jury shall remain inviolate." The constitution of 1848 continued this clause with the addition, "and shall extend to all cases at law without regard to the amount in controversy." In accordance with the rule in other states this general provision was held not to apply to proceedings under the eminent domain clause, because a jury was not guaranteed at common law in condemnation cases.⁸⁶

In the constitutional convention of 1869-70, there seems to have been no debate on the question of providing for a jury trial in condemnation cases, but most of the resolutions pertaining to eminent domain contained this requirement. In some instances the resolution called for a jury of freeholders. As finally adopted the provision read: "Such compensation, when not made by the state shall be ascertained by a jury as shall be prescribed by law." This provision is self-executing.⁸⁷

The guaranty of jury trial on issues of compensation is far from being a universal provision. It is found in the constitutions of Arkansas, Arizona, California, Colorado, Florida, Iowa, Maryland, Missouri, North Dakota, Ohio, South Carolina, South Dakota, Washington, and West Virginia. A jury is guaranteed in cases of appeals from the findings of some statutory tribunal in Alabama, Kentucky, Oklahoma, Pennsylvania.

In takings by a state or its agents a jury is guaranteed in Alabama, Arkansas, Colorado, Florida, Iowa, Kentucky, Maryland (except in Baltimore), Ohio, Oklahoma and Pennsylvania. In states where there is no constitutional requirement of a jury trial it is not common to provide for a jury by statute.

⁸⁴ Debates, p. 713.

⁸⁵ Michigan Art. XIII, Secs. 1 and 2, applies to all cases except when made by the state. Wisconsin Art. XI, sec. 2, limits to takings by municipal corporations. New York Art. 1, Sec. 7, and Montana Art. III, Sec. 15, limit the provision to takings for private roads.

⁸⁶ Johnson v. J. & C. R. R. Co., 23 Ill. 202 (1859).

⁸⁷ Mitchell v. R. R. Co., 68 Ill. 286 (1873).

The constitution of 1870 expressly exempts the state from the guaranty of jury trials. The fixing by commissioners of compensation to owners of land taken for the state house was assumed to be proper in *People v. Stuart*.⁸⁸ The Attorney General rendered an opinion that an armory commission might have exercised the power of eminent domain without a jury had the general assembly so provided but that since it did not so provide, a jury was required by the general eminent domain act.⁸⁹ The provision exempting the state from the guaranty of jury trial has been said to extend to all takings by the state in its corporate capacity. The Department of Public Works and Buildings was likewise said, by the Attorney General,⁹⁰ to have power to take lands without the intervention of a jury.

A provision exempting the state from jury trial is found in the constitution of New York, but its effect is not the same because the section in that state does not guarantee a jury trial in any case.

The constitutional guaranty of jury trial has been held to render void a section of the drainage act of 1879 which provided that commissioners might determine compensation in lieu of the jury when the court so ordered.⁹¹ But a statute has been held constitutional which makes the finding of the commissioners *prima facie* evidence as to the amount of compensation.⁹² The provision in the drainage act of 1879 which authorized the court to empanel a "jury" of twelve men and to direct them to examine the land, to make out an assessment roll and to grant a hearing on objections after the completion of the assessment of damages and benefits was held unconstitutional,⁹³ because the hearing thus provided for was not the kind of hearing guaranteed by the constitution. This body of twelve men, functioning in this manner, was not a jury. But it has been held that a jury of six men in justice of the peace courts, under the specific authorization of Art. II, Sec. 5 of the constitution, may properly determine compensation, because the term "jury" as used in the eminent domain clause includes any kind of jury recognized by the constitution, and is not confined to that kind of jury which is guaranteed at common law because a trial by jury was never guaranteed at common law in eminent domain cases.⁹⁴

There have been objections to the jury provision in other states, particularly in condemnation proceedings instituted by municipalities. It is stated that trials are thereby delayed and prolonged, that the expense is increased and that the verdicts are not just to the city.

The state of New York in 1913 added an amendment providing that compensation might be fixed "by the supreme court with or without a jury, but not with a referee * * *" Concerning this provision it was said:

⁸⁸ 97 Ill. 123 (1880).

⁸⁹ Opinions of the Attorney General, 1914, p. 153.

⁹⁰ Opinions 1917-18, p. 729.

⁹¹ *Juvinall v. Jamesburg Drainage District*, 204 Ill. 106 (1903).

⁹² *Chicago, T. T. R. R. Co. v. Chicago*, 217 Ill. 343 (1905).

⁹³ *Wabash R. R. Co. v. Coon Run Drainage District*, 194 Ill. 310 (1901).

⁹⁴ *McManus v. McDonough*, 107 Ill. 95 (1883).

"What is wanted to secure justice to the owner and the city and expedition is the selection of suitable men who shall sit alone, and as far as possible do nothing else. We have tried to accomplish this result in the state of New York by so amending the constitution as to provide that the Supreme Court may make the awards for land taken for public use. We anticipate that one or more judges will be assigned to try cases and perhaps, also appeals from the Tax Commissioners on assessment cases. It would be an ideal condition if certain judges devoted themselves exclusively to these cases, trying some cases where the interest of the city is in a high valuation, and other cases where the interest of the city is in a low valuation."⁹⁵

The constitutions of Illinois have not guaranteed a jury trial on issues of necessity for a particular taking. In the convention of 1869-70, proposed resolutions, relating to the exercise of the power of eminent domain by corporations and relating to the taking of land for private roads, contained provisions guaranteeing trial by jury on this issue, but these proposals were not adopted.⁹⁶ The constitutions of a few states guarantee a jury trial on the issue of the necessity for the taking.⁹⁷

Condemnation of land for roads for public and private use.

It is generally held that the power of eminent domain does not extend to the taking of land for private roads, because the taking is for private and not a public use. This was the law in this state prior to the adoption of the constitution of 1870.⁹⁸

The constitutions of 1818 and 1848 contained no provision expressly authorizing such takings. In the debates of 1869-70 this matter was the subject of some discussion.⁹⁹ The majority of the committee on roads reported in favor of a provision authorizing the opening of private roads, the necessity therefor and the amount of damages to be ascertained by a jury of freeholders. A minority of the committee opposed this resolution upon the grounds that property should never be taken for private use; and, that it was in conflict with the fourteenth amendment to the constitution of the United States. The minority recommended the resolution as it appeared in Art. IV, Sec. 30, with the exception that the word "maintaining" was dropped and the word "opening" inserted. The minority were of the opinion that the section, in this form, placed such roads "upon the same ground that the courts have put railroads, for public as well as private use."

⁹⁵ See Report of Conference on City Planning, 1912, p. 95 for a criticism of the jury system in condemnation cases. Lawson Purdy, President of the Department of Taxes and Assessments, New York City, in Proceedings of the Conference on City Planning, 1911, p. 120-121.

⁹⁶ Debates, p. 713.

⁹⁷ Michigan Art. XIII, Secs. 1 and 2, does not apply to the state. Wisconsin, Art. XI, Sec. 2, applies to takings by municipal corporations. New York, Art. L, Sec. 7, Montana, Art. III, Sec. 15, apply to takings of land for private roads.

⁹⁸ Nesbit v. Trumbo, 39 Ill. 110 (1866).

⁹⁹ Debates, p. 257.

As finally adopted the provision read: "The General Assembly may provide for establishing and opening roads and cart ways connected with a public road for private and public use."

Similar provisions are found in several states.¹⁰⁰ Legislation has been passed in Illinois under the authority of this section.¹⁰¹

Condemnation of land for drainage purposes. The constitutions of 1818 and 1848 did not contain any clause expressly authorizing the condemnation of land for the construction of drains and ditches, nor was any act passed by the general assembly during this period which squarely presented the question of constitutionality under the general eminent domain clause. In other states it had been held that land could be condemned under general eminent domain clauses for the purpose of draining swamp lands.¹⁰² The public purpose was found in the beneficial effect upon public health. In other cases similar acts were sustained on broader grounds. But this doctrine was not uniform. In New York before the drainage amendment was adopted it was held that such an act would not be valid unless the project could be related to the public health.¹⁰³

In the convention of 1869-70 the drainage question came up quite early.¹⁰⁴ A resolution was introduced calling upon the committee on the bill of rights to inquire into the necessity for amending the constitution so as to authorize the enactment of drainage laws applicable to private property. The question was not debated but the committee (doubtless having in mind the decision in *Nesbit v. Trumbo*,¹⁰⁵ which held invalid an act of the legislature authorizing the condemnation of land for private rights of way and the conflict of authority on this question in other states) reported in favor of inserting such a provision. Accordingly section 31 of Art. IV was inserted. This section provided: "The General Assembly may pass laws permitting the owners or occupants of land to construct drains and ditches for agricultural and sanitary purposes across the lands of others."

This provision was limited to the construction of drains and ditches for the two purposes specified. Since the effect of the clause was to operate as a limitation, there was no power to construct levees as independent projects. Furthermore, the general assembly could not authorize the organization of drainage districts with the power of levying special assessments because Section 9 of Article IX of the constitution limited the exercise of the power of levying special assessments "to cities, towns, and villages." Legislation attempting to authorize the condemnation of land for levee purposes, and the levying of special

¹⁰⁰ Alabama, Arizona, Colorado, Georgia, Michigan, Mississippi, Missouri, Montana, Oklahoma, New York, Washington, Wyoming. Usually the road is referred to as a private way of necessity, occasionally as a right of way or private road, or a private and public road.

¹⁰¹ See Hurd's R. S. Ch. 121 Sec. 98.

¹⁰² *Tidewater Co. v. Coster* 18 N. J. Eq. 518.

¹⁰³ *In re Ryers* 72 N. Y. 1.

¹⁰⁴ Debates, p. 74.

¹⁰⁵ 39 Ill. 110 (1866).

assessments to pay for the improvement, was accordingly held invalid.¹⁰⁶

In the year following this decision the General Assembly proposed an amendment to remedy the defects in section 31 of Art. IV, which had been disclosed by the decision in *Updike v. Wright*. This resolution authorized the organization of levee districts, conferred authority to levy special assessments, added mining purposes to those of agriculture and sanitation contained in the original section, and amplified the phraseology generally. The proposed amendment was adopted at the election in November, 1878. This section now provides: "The General Assembly may pass laws permitting the owners of lands to construct drains, ditches and levees for agricultural, sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts, and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State, by special assessments upon the property benefited thereby."¹⁰⁷

The provisions contained in the general eminent domain clauses apply to proceedings under this section.¹⁰⁸ Damage caused merely by increasing the flow of natural drainage gives no right to compensation.¹⁰⁹

Corporate franchises and property. Under the constitutions of 1818 and 1848 there was no provision expressly authorizing the taking, under the power of eminent domain, of corporate franchises and property. In the convention of 1869-70 there seemed to have been some fear that the general eminent domain clause would not authorize the condemnation of corporate properties.¹¹⁰ It was apparently thought that the grant of a franchise might carry with it an obligation not to exercise the power of eminent domain. The court has since held, in accordance with the general rule, that this power cannot be irrevocably bartered away. The breach of an agreement not to exercise the power of eminent domain is not an impairment of the obligation of a contract.¹¹¹ But the following provision was inserted: "The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the General Assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent

¹⁰⁶ *Updike v. Wright*, 81 Ill. 49 (1874).

¹⁰⁷ Provisions expressly authorizing the condemnation of land for drainage purposes have been adopted in the following states: Arizona, Colorado, Florida, Idaho, Iowa, Missouri, Mississippi, Montana, New Mexico, New York, Oklahoma, South Carolina, Washington, Wyoming.

¹⁰⁸ *Wabash R. R. v. Coon Run Drainage District*, 194 Ill. 310 (1901).

¹⁰⁹ *C. B. & Q. Ry. Co. v. People*, 212 Ill. 103 (1904), 200 U. S. 561.

¹¹⁰ See *Debates*, pages 262, 703, 713.

¹¹¹ *Village of Hyde Park v. Cemetery Association*, 119 Ill. 141, (1886); *Long Island Water Supply Co. v. Brooklyn*, 168 U. S. 685.

domain, any incorporated company shall be interested either for or against the exercise of said right."¹¹²

The general effect of this constitutional clause was the subject of examination in *L. S. & M. S. Ry. Co. v. C. & W. I. R. R. Co.*,¹¹³ where the court took occasion to say: "The power of eminent domain was conferred upon the general assembly by that clause which vested in that body the legislative power of the state. That power is not granted but it merely recognized by the state by Sec. 13 Art. 2, and the purpose of that section is to limit and regulate its exercise. Sec. 14 of Art. XI was inserted out of an abundance of caution."

This section is also spoken of as "reinforcing" Art. II, Sec. 13.¹¹⁴

¹¹² Art. XI, Sec. 14. Similar provisions are found in the Constitutions of Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Kentucky, Mississippi, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Virginia, Washington, West Virginia, Wyoming.

¹¹³ 97 Ill. 506 (1881).

¹¹⁴ *Mitchell v. R. R. Co.* 68 Ill. 286 (1873).

IV. EXTENSION OF THE POWER OF EMINENT DOMAIN.

Types of constitutional provisions in general. In recent years a number of constitutional provisions have been adopted which extend the power of eminent domain. Uses which heretofore were not generally regarded as public have by this means become public uses. These constitutional provisions fall into three groups: (1) There is a class which adds new functions of government to the state or to its subdivisions but which does not expressly confer the power of eminent domain as one of the means of their accomplishment. The ultimate effect, however, may be to draw the power of eminent domain to the added functions. This class is the most numerous. (2) In the second group, the sphere of government is extended and the power of eminent domain is expressly mentioned as one of the means of effectuating the new purpose. Amendments falling in these two classes comprise a wide range of subjects: conservation of natural resources, forests, reclamation work, internal improvements, municipal ownership of public utilities, state insurance, mining, manufacture of cement, operation of grain elevators and flour mills, sale of necessities, and building of homes. (3) In the third class of amendments, the power of eminent domain is authorized to be employed in a new direction, but for a purpose distinctly incidental to the accomplishment of other functions, as for example when a city, in the location or widening of streets or in the construction of public works, seeks to condemn land lying outside the proposed improvement for the purpose of further insuring the success of the improvement, or for other collateral objects. The properties taken are not directly and continuously used in the project but are sold after the incidental benefit arising from their temporary possession has been realized.

The first and second classes of constitutional amendments simply expand the power of eminent domain. Constitutional provisions of the third class likewise extend the power of eminent domain but the difference in the objects sought to be accomplished thereby has caused the introduction of the term "excess condemnation" as descriptive of this additional authority.

Constitutional provisions extending state functions. Constitutional provisions recently adopted, which extend state functions but which do not expressly confer the power of eminent domain with

respect to such new functions, relate either to the conservation of natural resources or to the conduct of some business enterprise.

Constitutional provisions authorizing the creation of forest preserves have been in force for some time.¹ In the absence of a constitutional provision authorizing the condemnation of land for the purpose of creating a forest preserve, a statute which confers this power probably would be constitutional. No case has been found which directly presents this question but the purpose might be regarded as analogous to that of public parks. It has been held in Illinois that it is proper to employ the taxing power to maintain forest preserves.²

The broader policy of conservation of all natural resources has been adopted in some states. The constitution of Idaho declares that the use of lands for the development of the natural resources of the state or the preservation of the health of the inhabitants shall constitute a public use. By an amendment adopted in 1918, Massachusetts authorizes the condemnation of land for the conservation of natural resources. In 1919 Texas provided for the conservation of natural resources and the creation of conservation districts. The preservation and distribution of water, irrigation, reclamation, drainage, forests, water and hydro-electric power were expressly referred to as being within the objects of the Texas amendment. The power of eminent domain was not expressly mentioned in the Texas amendment. South Dakota has recently authorized the state to invest its funds in, and to lend its credit to, corporations organized for the development of natural resources.

The reclamation of privately owned swamp and arid land is not usually undertaken by the state directly, but express constitutional provisions are common which authorize quasi-public corporations to condemn land for such purposes. There is but slight evidence of a desire to change this policy. Within certain limits, not clearly marked out, the state, under general constitutional provisions, may condemn, reclaim and sell land. The condemnation and reclamation of the Back Bay flats district in Boston harbor by the state was one of the most extensive of such reclamation projects. The statute which authorized this work was held constitutional under the general eminent domain clause,³ but its validity was made more certain because of its close relation to the promotion of commerce.⁴ Condemnation of land on a broad scale in furtherance of a definite policy of state reclamation work could scarcely be attempted in the absence of express constitutional provision.⁵ The legislature of the state of Washington at its last session proposed an amendment to be voted on in 1920 which declares that the taking of private property by the state for land reclamation and settlement purposes shall be a public use. An amendment which would have authorized the state to contract indebtedness

¹ Constitutional provisions relating to forest preserves will be found in Ohio, New York, Wisconsin, Washington, Montana, Idaho and Arizona.

² *Perkins v. Commissioners of Cook Co.* 271 Ill. 449 (1916).

³ *Moore v. Sanford*, 151 Mass. 285 (1890).

⁴ *Opinion of the Justices*, 204 Mass. 607.

⁵ *Cooley, Constitutional Limitations* (7th Ed.) Sec. 766.

for the reclamation of wild lands failed of adoption in Arizona in 1914; and a similar proposal increasing the state debt limit for building roads, constructing irrigation and power projects and developing untilled lands, was rejected in Oregon in the same year.

A few constitutional provisions empower the state to enter generally into the construction of works of internal improvement. In some states the power to construct such works is prohibited. But the construction of public roads and the improvement of lands donated to the state are commonly excepted from the prohibition. In this connection mention should be made of the act passed at the 1919 session of the General Assembly of Illinois which grants power to the Department of Public Works and Buildings: "To acquire by condemnation under the eminent domain laws of this state, lands, mines, quarries, gravel beds, clay beds, mineral deposits, or other property for procuring materials or producing manufactured products necessary in the construction and maintenance of public improvements by the state of Illinois;

"To lease, purchase, construct, maintain and operate lands, mines, plants and factories for the production of any raw materials or manufactured products necessary in the construction and maintenance of public improvements by the state of Illinois."⁶ Constitutional amendments have been adopted in North Dakota and in South Dakota which authorize the state to engage in works of internal improvement.⁷ Wyoming permits the state to engage in works of internal improvement when authorized by two-thirds vote of the people.

The power of eminent domain has been employed in European countries for the purpose of abating insanitary areas, and while it has been discussed to some extent in this country, this policy has not been acted upon. It is unlikely that the courts would sustain, under the general eminent domain clause, a statute which authorized the condemnation of properties for the purpose of changing the character of the neighborhood.⁸ The nearest approach to a policy of this character is that contained in the Massachusetts amendment of 1915 which authorizes the state to take land for the purpose of relieving congestion and for providing homes for citizens. A city may, of course, cut wide thoroughfares through an insanitary area; and in states which, by recent amendment, permit the condemnation of land bordering upon an improvement for the purpose of protecting it, a much greater portion of the district could be changed. The employment of the power of eminent domain to abate slum districts has been discussed and proposed,⁹ but the great expense and the likelihood that the abatement of one area would merely cause its re-appearance elsewhere has led others to oppose its use.¹⁰

⁶ Illinois Laws, 1919, p. 712.

⁷ South Dakota, 1918, authorizes the State to engage in works of internal improvements and to lend its credit to corporations for this purpose. North Dakota, 1918, authorizes the state or any of its subdivisions to make internal improvements or to engage in any industry not prohibited.

⁸ *Salisbury Land Co. v. Commonwealth*, 215 Mass. 371.

⁹ See *Proceedings of Conference on City Planning*, 1912, p. 100.

¹⁰ *Dewsnup, Housing Problems*, p. 233; *Swan, Excess Condemnation*, p. 481.

Constitutional provisions in several states expressly authorize the condemnation and operation of public utilities by municipalities. With respect to the power of a city to condemn existing public utilities, it has been held in New York that a statute enacted under the general eminent domain clause justifies such a taking.¹¹ The power to condemn public utilities has been conferred upon Illinois cities by an act of 1913.¹² The power to acquire harbors, canals, wharves, levees, and all appropriate harbor structures, elevators and warehouses was delegated to municipalities in the same year.¹³ Little doubt could be raised as to the constitutionality of the main features of these acts, but objections might be raised with respect to the provision found in each which authorizes the city to lease to private corporations for a limited number of years the utilities taken over by the city by condemnation proceedings. While the courts elsewhere allow the condemnation of properties in fee and their ultimate sale upon the abandonment of the undertaking, they have refused in other types of cases to permit the taking of land from a private person to be immediately sold or leased to another private person. A constitutional provision in Ohio expressly authorizes the condemnation and leasing of public utilities by municipalities. Other provisions relating to the acquisition and operation of public utilities are to be found in Arizona, California, Colorado, Louisiana, Michigan, Missouri, Oregon and South Carolina.

The power of eminent domain under general eminent domain clauses cannot be employed to aid an enterprise which is not invested with a public interest, nor to aid the state or its subdivisions, when such enterprises are conducted by them.¹⁴ In a number of states there exist constitutional prohibitions upon the granting of aid to private enterprises by the state or municipalities or both. The extension of the functions of government in some states to include the conduct of business enterprises may have the effect of expanding the power of eminent domain. In North Dakota the state has been given the power by constitutional amendment of 1918 to engage in any private enterprise which is not expressly prohibited by the constitution. The state of Oklahoma may engage in any occupation or business except agriculture. In Arizona the state and municipal corporations have the right to engage in any industrial pursuit. In other instances the power is conferred upon the state to engage in certain specified enterprises, such as providing for state insurance against loss by hail in North Dakota and in South Dakota, engaging in mining and the manufacture of cement in South Dakota, in the establishment and operation of grain elevators and flour mills,¹⁵ and in supplying necessities of life in time of war or other emergency.¹⁶ An amend-

¹¹ *In re City of Brooklyn*, 143 N. Y. 596, affirmed 166 U. S. 685.

¹² *Hurd's R. S.* 1917, Chap. 111A, Secs. 87-101.

¹³ *Hurd's R. S.* 1917, Chap. 24, Sec. 70 et seq.

¹⁴ *School v. Coal Co.*, 118 Ill. 427 (1887) (mining). *Banker v. Grand Rapids*, 142 Mich. 687, (state cannot condemn land for coal yard or for a plumbing establishment). *Keen v. Waycross*, 10 Ga. 588; *Mather v. Ottawa*, 114 Ill. 659 (1885).

¹⁵ *South Dakota; North Dakota*,

¹⁶ *Massachusetts* 1917

ment was adopted in Massachusetts in 1915 which authorized the condemnation of land to relieve congestion and to provide homes.¹⁷ At its 1919 session the legislature of Kansas proposed an amendment to be voted on in 1920 which authorizes the creation of a fund to encourage the purchase of farm homes.¹⁸ A proposal to levy a land tax to establish a home-maker's fund was defeated in Oregon in 1916.

Constitutional provisions expressly extending power of eminent domain. Recently adopted constitutional provisions which extend the use of eminent domain relate to the conservation of natural resources, to the acquisition of public utilities by municipalities and to housing projects. The constitutions of Ohio and Wisconsin authorize the taking of land for forest preserves. The conservation of natural resources is declared to be a public use in the constitution of Idaho, and an amendment in Massachusetts in 1918 authorizes the condemnation of land for the conservation of natural resources. A proposal, to be voted on in Washington in 1920, provides for the taking of land for reclamation and settlement purposes. The constitutions of several states authorize the condemnation and operation of public utilities by cities. An amendment adopted in Massachusetts in 1915 authorizes the condemnation of land to relieve congestion of population and to provide homes for citizens.

Excess condemnation—general statement. The problem which is sought to be solved by excess condemnation is primarily a problem of the large city. The city desires a greater control over the character of the neighborhood surrounding public improvements, such as newly opened or widened streets, public parks or buildings, for the purpose of protecting such improvements from undesirable structures and for the more general objects of stabilizing real estate values and insuring the proper development of the district.

First, it is urged that the city be given power to condemn the small remnants of lots which are left as a result of the location or widening of streets, and in addition, the power to condemn a sufficient amount of land which, when added to the remnant, will make suitable building sites. The city is also to be authorized to sell the lot. Second, it is proposed that the city be given power to condemn considerable areas adjoining a public improvement for the purpose of re-selling them under proper restrictions designed to protect the improvement and to control the character of the buildings in the section.

¹⁷ This action followed an opinion of the Justices of the Supreme Court, 211 Mass. 624, that such a project was not a public purpose. See also, *Salisbury Land Co. v. Commonwealth*, 215 Mass. 371, (1913),

¹⁸ Kansas Session Laws, 1919,

Third, it is proposed that the city be authorized to condemn the area surrounding an improvement and to sell the same for the purpose of recouping the cost of the improvement.

Constitutionality of statutes authorizing excess condemnation.

The courts of the United States, with practical unanimity, have held unconstitutional under general eminent domain clauses, statutes which authorize the condemnation of more land than is necessary for a proposed improvement, such excess to be later sold or leased. Such a taking is held not to be for a public purpose. As early as 1824 the Supreme Court of South Carolina took this position with reference to a statute which authorized the taking and resale of lot remnants.¹⁹ A few years later a similar statute of New York was held unconstitutional.²⁰ These two cases had the effect of settling the constitutional question, at least for a time. No statutes of like character are found until 1870, at which time New Jersey passed an act authorizing the replotting of land affected by an improvement so as to absorb the remnants.²¹ The act was never tested. In 1904, a remnant act was passed in Massachusetts.²² A similar one, but with broader powers was enacted in Ohio in the same year, followed by like legislation in Virginia in 1906, Connecticut in 1907, Pennsylvania in 1907, Maryland in 1908, Wisconsin in 1909, New York in 1911, and Oregon in 1913.

The Maryland act came before the court in 1911, and, while the decision is not a square holding against its constitutionality, for the point was not definitely in issue, the language of the opinion points strongly in that direction.²³ Two years later, the Pennsylvania statute was declared unconstitutional.²⁴ This statute authorized the condemnation and resale under building restrictions of land within 200 feet of a proposed parkway. The object of the taking was to preserve the improvement. There was a slight intimation by the court that the taking of an easement for such a purpose might not be objectionable, but the taking of land to be resold possibly to others was held to promote a private purpose and was therefore void. Proposed legislation of the same nature was for like reasons said to be unconstitutional, in opinions of the justices of Massachusetts, rendered to the legislature in 1910.²⁵ In its first opinion the court took occasion to remark that the lot remnant act might be sustained, but they stated that this legislation went "to the very verge of constitutionality" and that it could apply only when the particular remnant was too

¹⁹ *Dunn v. City of Charleston*, Harpers Law Reports, 189.

²⁰ *In re Albany street* 11 Wend. 149, (1834); *Emery v. Conner*, 3 N. Y. 511, (1850).

²¹ *New Jersey Laws*, Chap. 117 (1870).

²² *Mass. Laws* (1904).

²³ *Bond v. Baltimore*, 116 Md. 683, (1911). See, also, *Philadelphia etc. R. Co. v. Baltimore*, 121 Md. 504.

²⁴ *Mutual Life Insurance Co. v. Philadelphia*, 242 Pa. St. 47 (1913).

²⁵ *Opinions of the Justices*, 204 Mass. 604, 204 Mass. 616.

small to be of any practical value and even then only upon an adjudication that the public convenience and necessity required the taking. With the exception of this opinion, no authority has been found which is favorable to the constitutionality of a statute authorizing excess condemnation under a general eminent domain clause. Such judicial authority as there is, is in accord in indicating that if municipalities are to be given the power to condemn land which is not to be used for the purposes of the improvement, but is to be resold for any collateral object whatsoever, such power must be conferred by express constitutional provision. The statutes in other states have not been before the courts, those interested in their use apparently acquiescing in the prevailing judicial opinion.

The question here discussed has never been raised in the courts of Illinois, but in a case²⁶ decided in 1866 the Supreme Court of Illinois, in holding that a statute which authorized the condemnation of land for private rights of way was unconstitutional, took occasion to quote with approval from the Albany Street case²⁷ which held the New York lot remnant act void. There is no reason to suppose that the courts of this state would hold such an act valid. Under the existing eminent domain clause it is definitely outside the scope of legislative power to authorize municipalities to condemn and resell lot remnants or take and resell lands for the purpose of protecting an improvement or for improving the character of the neighborhood, or for purposes of recouping the cost of the improvement.

It has sometimes been said that a statute which would authorize the condemnation of easements for the purpose of protecting an improvement or for improving the character of the neighborhood would be constitutional, because this does not involve excess condemnation but only an extension of the power of eminent domain, the authority to resell after the taking being eliminated. But little authority can be adduced in support of this position. The case usually referred in this connection is that of *Attorney General v. Williams*.²⁸ In this case an act of the General Court of Massachusetts which authorized the condemnation of easements of light and air above the height of ninety feet surrounding Copley Square in the city of Boston was held constitutional. The limitation of the height of buildings is, however, recognized everywhere as a legitimate exercise of the police power, and the Massachusetts court intimated in this case that payment of compensation would not have been necessary. No case has been found which discusses the broad question whether a statute may constitutionally authorize a city to condemn easements in the form of general building restrictions and annex them to public improvements. The General Assembly of Illinois, however, has acted upon the assumption that such an act is constitutional.²⁹

²⁶ *Nesbitt v. Trumbo*, 39 Ill. 110.

²⁷ 11 Wend. 149 (1834).

²⁸ 174 Mass. 476, 178 Mass. 330, 188 U. S. 491 (1899); *Walter L. Fisher*, *Plan of Chicago* p. 148.

²⁹ Sec. 3 of Art. IV, Act of 1915, providing for the consolidation of the local governments of Chicago authorizes the condemnation of easements to control the surroundings of parks. This act has never gone into effect, because dependent upon a favorable popular vote in Chicago.

Scope of the police power. City plans, rather generally, seek an adequate control over the location and regulation of all offensive industries, of advertising signs, and of ordinary business establishments. Buildings are to be safely constructed, limited to certain heights, and to certain proportions of the lot, and constructed in accordance with established building lines. The display of advertising signs is to be restricted. In planning for undeveloped areas it is sought to prohibit the building within the lines of officially mapped streets. A thoroughgoing zoning system is sought. To what extent are these objects attainable under the police power without express constitutional authority?

The police power is adequate to compel the safe construction of buildings,³⁰ and to exclude from certain districts any business which is a nuisance and many which are not nuisances per se, such as public wash-houses and the like.³¹ In the matter of excluding business establishments from specified areas, the courts probably have not gone farther than in the case of *Ex parte Hadacheck*.³² In this case an ordinance was sustained which excluded brick yards from residential districts. Retail stores and similar business establishments cannot be excluded from residence districts.³³

Nor may the police power be used to control the general character and architecture of a building. The issuance of building permits, conditioned upon the proposed building conforming in size and general character and appearance to the general character of buildings in the neighborhood, is not justified.³⁴ "A citizen has the common law right to improve his property as his taste, convenience or interest may suggest without considering whether his building will conform to the general character of buildings previously erected", says the court. The compulsory establishment of building lines is not generally within the police power³⁵ though the recent case of *Eubank v. Richmond*³⁶ sustained such an ordinance which allowed the establishment of a building line on request of two-thirds of the property owners in the district affected. This case was reversed by the Supreme Court of the United States³⁷ but apparently not upon the ground that no building line could be established. The requirement that dwellings be constructed as separate and detached buildings is likewise unreasonable.³⁸

The history of billboard regulation is a long one. When the statute merely prescribes the manner of construction the regulation is valid.³⁹ If the statute prohibits the construction and display of bill-

²⁹ *Commonwealth v. Roberts*, 155 Mass. 281; *Health Dept. v. Rector*, 145 N. Y. 32.

³¹ *Ex parte Quong Wo*, 161 Calif. 220; *Chicago v. Stratton*, 162 Ill. 494 (1896); *Shea v. Maucie*, 148 Ill. 14; *People v. Ericsson*, 263 Ill. 368 (1914).

³² 165 Calif. 416, 239 U. S. 394.

³³ *People v. Chicago*, 261 Ill. 16 (1913); *Stubbs v. Scott*, 127 Md. 86, and *State v. Houghton*, 134 Minn. 226, though the Minnesota decision was by a bare majority.

³⁴ *Bostock v. Sams*, 95 Md. 400.

³⁵ *Fruth v. Charleston*, 75 W. Va. 456; *Curran v. Guilfoyle*, 38 App. Div. N. Y. 82; *In re Charleston*, 57 App. Div. N. Y. 167; *St. Louis v. Hill*, 116 Mo. 527.

³⁶ 110 Va. 749.

³⁷ 226 U. S. 137.

³⁸ *Byrne v. Maryland Realty Co.*, 129 Md. 202, (1916).

³⁹ *Gunning Adv. Co. v. St. Louis*, 235 Mo. 99; *Varney v. Williams*, 155 Calif. 318; *People v. Ludwig*, 218 N. Y. 540; *Chicago v. Gunning*, 214 Ill. 628 (1905).

boards the regulation is held invalid.⁴⁰ The most advanced position on billboard regulation yet taken by any court is the recent decision in *Cusack v. Chicago*,⁴¹ where an ordinance prohibiting the erection of billboards in residential districts, except upon the written consent of the owners of a majority of the frontage in the block, was sustained. The ordinance was not sustained upon aesthetic grounds. The court finds a relation to public morals and health. Massachusetts has deemed this power inadequate and has attempted to expand the police power by a constitutional amendment of 1918, as follows: "Advertising on public ways, in public places, and on private property within public view may be regulated and restricted by law."

A similar provision was rejected in Ohio in 1912. A statute which imposes reasonable restrictions upon the height of buildings is a proper exercise of the police power.⁴²

Cities frequently desire to project new streets into undeveloped territory in anticipation of future needs and to prohibit the erection of buildings within the lines of the proposed street, pending the taking of title. Except in Pennsylvania this has not been allowed under the police power.⁴³

There has as yet been no thorough testing of the constitutionality of zoning statutes such as the one which went into effect in New York City in 1916, and in Illinois in 1919.⁴⁴ The Illinois zoning law authorizes cities (1) to limit the height of buildings, (2) to limit the bulk of buildings, (3) to limit the intensity of the use of lot areas, (4) to determine the area of yards and open spaces, (5) to restrict the location of trades and industries, (6) to exclude trades and industries from fixed districts, and (7) to establish residential districts from which buildings designed for business may be excluded. The act provides that no ordinance shall deprive owners of existing property of the right to continue the use of the property for the purpose for which it was employed at the time any such ordinance goes into effect. The owners of a majority of the frontage in any district, by written objection, may prevent the enforcement of the ordinance. The *Cusack* case, sustaining an ordinance prohibiting the erection of billboards in residence districts except upon the written consent of the owners of the majority of the frontage in the block, is a fairly strong authority for the constitutionality of the Illinois act, but it remains yet to be seen whether the courts will extend the rule of that case to justify such regulations as are sought to be authorized by this statute. In Massachusetts it has been assumed, apparently, that the decisions which concern the constitutionality of zoning statutes do not go far enough to make certain the constitutionality of such acts, and accordingly by constitutional amendment of 1918, it was provided that:

⁴⁰ *Haller v. Training School*, 249 Ill. 436 (1911).

⁴¹ 267 Ill. 344 (1914); 242 U. S. 526.

⁴² *Welch v. Swasey*, 193 Mass. 364, 214 U. S. 91; *Cochran v. Preston*, 108 Md. 220.

⁴³ *Forrster v. Scott*, 136 N. Y. Suppl. 577; *Edwards v. Bruorton*, 184 Mass. 529; *Bush v. McKeesport*, 166 Pa. St. 57. See the analysis of the cases bearing on the constitutional limitations on city planning powers in the report of the Conference on City Planning, 1917, p. 199, by Edward M. Bassett, Special counsel to the Zoning Committee, New York City.

⁴⁴ Illinois Laws, 1919, p. 262.

"The General Court shall have power to limit buildings according to their use or construction, to specified districts of cities and towns."

It is obvious that the problem of the lot remnant is distinctly one of eminent domain and not of the police power. Assuming the constitutionality of the Illinois Zoning Act, control over the height, bulk, location and area of buildings which are to be erected in the future may be had, to the extent that the owners of the majority of the frontage, in the district affected, consent. The act does not and probably could not authorize the imposition of restrictions upon the architectural style and upon the value of the buildings to be later erected. The act falls short of conferring upon cities such control over building development as may be exercised by a grantor of city lots through restrictive covenants in deeds. Changes in existing properties, and control over the general architectural type of buildings to be erected can probably be accomplished only by the exercise of the power of eminent domain.

List of constitutional provisions authorizing excess condemnation. Constitutional amendments providing for excess condemnation have been adopted in Massachusetts (1911), Ohio (1912), Wisconsin (1912), New York (1913), and Rhode Island (1916). Amendments of a broader character than those actually adopted in New York and Wisconsin were defeated in New York in 1911 and in Wisconsin in 1914. An amendment similar to those adopted in Ohio and Wisconsin failed in California, in 1914, 1915, and 1918. An amendment similar to the ones adopted in Massachusetts, New York, and Rhode Island, failed of adoption in New Jersey in 1915.

V. EXCESS CONDEMNATION.

Lot Remnants. The problem of the lot remnant left by the opening or widening of streets did not present itself acutely in Illinois until the city of Chicago undertook to carry out its extensive program of municipal improvements. Upon the formulation of the city plan several years ago this problem was anticipated, and it was urged that the city should be granted power to condemn lot remnants for the purposes of facilitating their union with adjoining property.¹

The recent widening of Twelfth Street and Michigan Avenue, and the survey of the proposed Ogden Avenue extension in the city of Chicago present the problem of lot remnants in striking form. The Price property located on Twelfth Street and Wabash Avenue is said to be the most flagrant example.² The situation with respect to this property is as follows: The Price property had a frontage of 166 feet on Twelfth Street and 71 feet on Wabash Avenue. The city took 68 feet of the 71 feet on a frontage of 166 feet. This taking left a lot remnant of 166 feet fronting on the widened street with a depth of 3 feet. The loss to the city appears from the following figures. The city paid \$204,000 for the 68 feet taken, that is, at the rate of \$3,000 per front foot on Wabash Avenue. The Supreme Court held the remnant was damaged and not benefited and for this damage the city paid \$9,000, that is \$3,000 per front foot. The city, therefore, paid the owner as much for the property which was not taken as it paid for the land taken. Had it been allowed to take this remnant, which it paid for in full, it could have recouped at least a portion of this cost by sale to the owner of the adjoining property.

The city also loses in the amount of the special assessment which can be levied against the property in the rear. In this case the 50-foot lot behind the remnant was assessed \$14,200. For the 25 feet nearest Twelfth Street it was assessed \$440 per front foot, or \$11,000; for the next 25 feet, \$128 per front foot or \$3,200. Had the remnant been united with the adjoining property, at this rate, such remnant as a part of the other property, would have borne an assessment for benefits of \$1,320, instead of a damage of \$9,000. As a matter of fact, however, this three-foot strip and the rear property would have been

¹Legal Aspects of the City Plan, by Walter L. Fisher, in the report on "Plan of Chicago" by the Commercial Club of Chicago.

²Chicago Bureau of Public Efficiency, Report on Excess Condemnation, Sept. 1918. This report discusses this problem in Chicago in detail and presents several diagrams showing the size and shape of the remnants which have been left. The Report of the Committee on Taxation of New York on Excess Condemnation contains a number of photographs and diagrams of lot remnants in New York City.

assessed at a rate higher than \$440 per front foot, for they could then have been assessed as corner property. The probable increase in the assessment rate over \$440 per front foot if it had been corner property appears roughly from a comparison of the assessment on corner property lying to the east and fronting on Michigan Avenue. Here, the whole of the original corner property was taken and a small part of the lot in the rear was taken but there was left to this lot a frontage of 32 feet on Michigan Avenue and a new frontage on Twelfth Street of about the same length, so that it now became corner property. This lot was assessed \$1,220 per front foot, or a total of \$60,000 as compared with the assessment of \$440 per front foot on the lot on Wabash Avenue which was blocked off from the new street by the remnant. Michigan Avenue property is about twice as valuable as Wabash Avenue property at this point. After making this deduction, it appears that the first 32 feet of frontage on Wabash Avenue should have been assessed \$30,000. Actually* this 32 feet was assessed but \$11,500—nothing for the first 3 feet, \$11,000 for the next 25 feet and \$500 for the remaining 4 feet. The city lost the difference between \$30,000 and \$11,500, or \$18,500, plus the \$9,000 paid as damages for the 3-foot strip, making a total loss of \$27,500.

The report of the Chicago Bureau of Public Efficiency, from which the above facts are taken, states that 617 feet of frontage of the Michigan Avenue widening, out of a total of 3,000 feet affected, will have depths of from 5 to 14 feet. Approximately one-fifth of the frontage on one side of the Michigan Avenue improvement is thus made up of remnants. The proposed Ogden Avenue extension will leave 93 remnants, with a frontage of approximately 3,300 feet on the proposed new street, too small for building purposes.

From these facts the primary reasons for allowing the condemnation of lot remnants are apparent. There is an unquestionable direct loss to the city. There is also a loss to the property owners in the neighborhood. The history of lot remnants in several cities shows that they are apt to remain in separate ownership for years. They cannot be used for building purposes. The street is thus left in an ugly and irregular appearance. Frequently this condition is accentuated by the use of the small area for billboards or other structures of temporary nature out of keeping with the general character of the neighborhood. The development of the street is greatly retarded and the normal increase in real estate values is checked. The improvement is thus robbed of much of its effectiveness and the general utility of the district is greatly impaired.

It has sometimes been urged that the taking of the remnant is unnecessary because its union with the adjoining property can be brought about through private sale or at most by authorizing the city to buy the strip if the owner is willing. The experience of New York does not justify this hope. The union of the two properties is dependent largely on the price asked for the remnant. The history of such parcels shows that the main obstacle is the wide difference of opinion as to price between the owner of the remnant and the proposed purchaser.

The city, not primarily desiring pecuniary gain from this strip, would be in a much better position to cause the two properties to be united. Where the remnant is owned by several persons having different interests and some of them under disability the obstacles to a private sale are great.

Investigations into the lot remnant problem have led to the conclusion that the city should be given the power to condemn these ill-shaped strips of land.

The Massachusetts Committee on Eminent Domain, which made an exhaustive study of excess condemnation here and in Europe, says in its report, "It often happens that the owners of these remnants, desirous of deriving some income, erect temporary structures, unsuited for proper habitation or occupancy. Such structures are frequently made intentionally objectionable, both in appearance and in the character of their occupancy for the purpose of compelling the purchase of the remnant at exorbitant prices. The result is that a new thoroughfare, which should be an ornament to the city, is frequently for a long period after its construction disfigured by unsightly and unwholesome structures to the positive detriment of the public interests."³

The Committee on Taxation of the City of New York, in its report on Excess Condemnation, reaches a similar conclusion. "New York furnishes several 'horrible examples' in cutting new streets through sections already built up without excess condemnation. Excess condemnation would leave the city free to rearrange and subdivide the land fronting the improvement into plots of the size and shape best suited to the proposed development."⁴

The Chicago Bureau of Public Efficiency, in its recent study of this problem, concludes that "If in future projects the difficulties are to be avoided which the city has met in the building of the Michigan Avenue boulevard link and the widening of Twelfth Street, the City must be given a free hand so that it can deal with this problem, rearranging the lots in a block to conform to the new street, thus making them available for building purposes. When remnants are left it is essential if the street is to be developed speedily that such remnants be united with adjoining property under a single ownership so that the combined plots can be made suitable for building sites."⁵

Writers on the question have reached similar conclusions.⁶ It will also be noticed from the texts of proposed and adopted constitutional amendments in the appendix that in all of those states, except in New Jersey, where the language of the proposed amendment limited the power of excess condemnation to the taking of remnants, the provision has been adopted.⁷

³ Massachusetts House Document 228, (1904), p. 5.

⁴ Report, 1915.

⁵ Report on Excess Condemnation, Sept. 1918, p. 36.

⁶ Flavel Shurtleff and Frederick Law Olmsted, *Carrying out the City Plan*; Lawson Purdy, *Report of the Conference on City Planning*, 1911, p. 121; Herbert S. Swan, *Report on Excess Condemnation*, prepared for the Municipal League, published by the Committee on Taxation of New York; Robert E. Cushman, *Excess Condemnation*, p. 72; Ernst Freund, *Conference on City Planning*, 1911 p. 242.

⁷ Massachusetts, New York and Rhode Island.

Protection of public improvements. In recent years there has been considerable discussion as to the advisability of conferring upon municipalities the power to condemn land bordering on an improvement, for the purpose of facilitating the city's control over the character of the neighborhood. A new use of the power of eminent domain is sought for purposes which are outside the police power. While the city may, under its police power, reasonably control building heights, and exclude such business concerns from residential districts as livery stables, public garages, brick yards and the like and may exercise a fairly adequate control over billboards, it cannot establish an exclusively residential neighborhood, nor a business district, except in so far as these objects will prove to be attainable under a zoning law such as was enacted in Illinois in 1919. The city, under the police power, cannot impose restrictions upon the general architectural style or value of buildings. The various sections of metropolitan areas are undergoing continual change, with a destructive effect upon the stability of land values and upon the harmony of architectural construction and arrangement. Slum areas develop. Public improvements constructed at great expense may fail to accomplish the objects for which they were designed because their usefulness becomes impaired by changed conditions. Building restrictions inserted in deeds to newly sub-divided property operate as partial correctives where they exist, but the policy behind them is not formulated with respect to the city's needs as a whole.

It has been proposed, therefore, that the city be given power to condemn land which borders upon public improvements such as streets, parks and public buildings and to sell the excess land with restrictions as to the use of the property; the power to be used with respect to developed as well as undeveloped property. There has been virtually no experience in this country in employing the power of eminent domain for this purpose, but it has been used in England with considerable effectiveness during the past twenty years. Constitutional amendments authorizing excess condemnation for this purpose have been adopted in Ohio and Wisconsin, both in 1912; and have failed of adoption in New York and California.

It is argued that the city should have the power to control, within reasonable limits, the character of a district bordering on its own improvements, if it is willing to pay for that privilege. It is urged that the exclusion of inappropriate structures and business establishments in residence districts, or of residences in business districts, the securing of reasonable harmony in architecture, building lines and uses of property steady land values, and benefit property owners and the city economically and from a standpoint of aesthetics. It is also urged that the realization of the full benefit of the improvement would thereby be insured; that the power would be an effective instrument for the rehabilitation of insanitary areas; that public health, morals and welfare would be promoted. Legislative investigative committees and civic bodies have reported in favor of this extension of the power of eminent domain. The Committee on Taxation of the City of New

York has stated that, "American cities have been hampered in effective city plan development and in creating dignified and artistic places by the free and unrestricted use of abutting property by private owners. There is no orderly architectural arrangement. The city should have the power to sell or lease the excess land subject to suitable restrictions."⁸

The Chicago Bureau of Public Efficiency recently said, "Experience in the widening of Michigan Avenue and Twelfth Street, the two initial projects in the carrying out of the Chicago plan, shows not only that distorted and unusable small areas or remnants are left when a street improvement of this character is made, but also that the municipality, having no control over the character of building development along the line of the new street, may find that the usefulness and the value of the improvement, because of the lack of beauty and symmetry in the buildings erected along the new thoroughfare may be greatly lessened, although the community has been put to large expense to make the street adjustment. * * * It [the city] must secure control over building improvements fronting on the newly widened or opened street in order that the desired view, appearance and economic importance of the new thoroughfare may be preserved and the full benefit of the improvement realized."⁹

In his report on the legal aspects of the city plan in 1909, Walter L. Fisher had the following to say with reference to this proposal: "In order to secure the full benefit of a park, boulevard, avenue or other public recreation or resort, some control of the immediate surroundings is indispensable. The municipal authorities need some power to regulate the use of premises within immediate view of the public grounds, so as to prevent advertising, restrict kinds of business, and make appropriate regulation of the heights, manner of construction and location of the surrounding buildings. To that end resort must be had either to the police power or to the power of eminent domain. The police power of the state is not available for merely esthetic purposes and is quite inadequate to the solution of this special problem."¹⁰

Several writers have likewise put themselves on record as favoring this extension of the power of eminent domain.¹¹

The fundamental objection to excess condemnation for the purpose of controlling the character of areas bordering on public improvements is, of course, that the taking amounts to an unjustifiable interference with the rights of private property. It is said that the public welfare does not demand it; that the police power is adequate,¹² and that it is preferable to seek any desired extension of control over the use and location of buildings through the gradual expansion of the police power by judicial decision rather than by abrupt changes in constitutional

⁸ Report on Excess Condemnation.

⁹ Report on Excess Condemnation, pp. 35-36.

¹⁰ Plan of Chicago, Commercial Club of Chicago, p. 139.

¹¹ Flavel Shurtleff, Carrying out the City Plan, p. 137; Robert E. Cushman, Excess Condemnation, p. 116; Herbert S. Swan, Report on Excess Condemnation, p. 19; William Bennett Munro, Principles and Methods of Municipal Administration, p. 91.

¹² Ernst Freund, Conferences on City Planning, 1911, p. 242.

principles, upon the theory that gradual changes are more calculated to represent the real desires of the people. It is further urged that the exercise of the police power entails little expense to the public as compared with that which accompanies the taking of property under the power of eminent domain and that it is better to sacrifice the added control which cities would derive from this extension of the power of eminent domain than to adopt a policy which might lead to an era of unfortunate land speculation for cities. Doubtless for these reasons proposed constitutional amendments providing for excess condemnation for these purposes have in some instances failed of adoption, as has been the case in California three times and in New York, although such a constitutional provision has been adopted in Ohio and in Wisconsin.

The amendments which have been rejected have conferred relatively broad powers upon the legislature, and it is likely that the desired objects could have been secured by a more restricted grant of power. The New York and California proposed amendments merely limited the taking of property to that which was "additional, adjoining and neighboring". There was no limitation as to the kind of improvement to which the power applied.

To meet the objections that have been raised to the use of excess condemnation for the purpose of protecting improvements, two proposals have been made. One consists in requiring the city to sell the land, condemned in excess, to its former owner if he wishes to buy it. Only upon his rejection of the offer would the land be offered to the general public. There would seem to be no public advantage in selling land to another when the former owner is willing and able to retake title with the restrictions.

A second proposal, designed to meet some of the objections and at the same time calculated to secure many of the advantages of excess condemnation for the purpose of protecting improvements, seeks to confer upon municipalities the power to condemn easements only in the adjoining land. Under this plan the property owner is protected in his ownership but is restricted in the use of his property. It is further urged that this plan would involve less financial risk to the city. Within certain limits, not well defined, the condemnation of easements could be authorized by statute but any thorough-going plan of control would probably meet with constitutional objection. The recent act in this state providing for the consolidation of the local governments of Chicago, but which has never gone into effect, authorizes the city to acquire easements in lands in the vicinity of parks for the purpose of controlling the surroundings. As to the policy of condemning easements, those who advocate the broader power admit its effectiveness but deny that it goes far enough. As far as undeveloped territory is concerned, the condemnation of easements probably would be adequate but it is contended that this power would not be adequate to protect improvements or to change the character of a district which is already improved.

Recoupment. The proposal has been made to employ the principle of excess condemnation for the purpose of recouping the cost of a public improvement and for intercepting a part of the increment of value added to land as a result of the improvement. The adoption of such a policy is advocated as a substitute for or as supplementary to the common practice in this country of levying special assessments, or the practice in some European countries of imposing increment taxes. It is urged that the city having created this increment of value is entitled to receive it. The economic justification for recoupment is much the same as that which supports a tax on the unearned increment such as is levied in England under the provisions of the Lloyd George budget of 1909.

The principle of recoupment has never been adopted in this country though it has been employed extensively in European countries. In England the practice dates back to the Land Clauses Consolidation Act of 1845, but as a financial measure it has not been a success. Out of fourteen miles of streets widened by the Metropolitan Board of Public Works of London at a cost of \$58,859,000 the sale of the surplus land totaled but \$26,608,000. A few street improvements have shown a margin of profit. Later improvements put through by the London County Council were, with but few exceptions, not financially successful. The extensive improvements in the city of Paris, during the days of the second empire, showed a like loss. Land to the amount of \$259,400,000 was condemned but in 1869 the city had recouped but \$51,800,000 from the sale of surplus lands and still had on hand land valued at \$14,400,000. Later projects have likewise failed to produce a profit or meet the cost. The experience of Belgium, while in many cases productive of heavy losses, in more recent years has been more successful, particularly in projects which were designed to change the character of slum areas. The levying of special assessments is not common in Europe though it is coming to be looked upon with greater favor.

In this country there is but little enthusiasm shown for the adoption of the principle of condemning land for purposes of recouping the cost of an improvement.¹³ The financial risks, apparent from European experience, are deemed too great. The practice of levying special assessments is regarded as preferable. When recoupment is favored at all, it is regarded not as the primary object but as an incident to some other project such as taking of lot remnants or the protection of improvements. In every case in this country where a proposed constitutional amendment has been worded broadly enough to permit the taking of excess land for purposes of recoupment, it has been defeated. This has been the case in New York, Wisconsin, and California, although in the first two states amendments of more limited scope have been adopted.

¹³ Committee on Taxation of New York, Report on Excess Condemnation; Chicago Bureau of Public Efficiency, Report on Excess Condemnation; Herbert S. Swan, Report on Excess Condemnation; W. L. Fisher, Legal Aspects of the City Plan; R. E. Cushman, Excess Condemnation; Flavel Shurtleff, Carrying out the City Plan.

Analysis of constitutional provisions authorizing excess condemnation. If it be decided to adopt the principle of excess condemnation the following distinct questions are presented:

1. Should the clause be self-executing?
2. Upon what agencies of the state should power be conferred?
3. To what kinds of public improvements should it be applied?
4. How much land in excess should the condemning agency be authorized to take?
5. What interest in the land should be authorized to be taken?
6. What directions should be given as to the disposition of the excess taken?
7. What restrictions should be imposed in the disposition of the excess land?

(1) Self-executing or enabling act. The amendments adopted in Massachusetts, New York, Rhode Island and the amendments which failed of adoption in California and New Jersey are enabling acts. The Ohio and Wisconsin amendments and the amendments defeated in New York and Wisconsin are probably self-executing. An enabling act would be in harmony with other eminent domain clauses and would be preferable. The necessary detailed restrictions could more effectively be worked out by a general legislative enactment.

(2) Upon what agencies should the power be conferred? The various amendments contain the following provisions relating to the character of the agencies upon which the power is conferred. In Massachusetts the power is given to the commonwealth, counties, cities or towns; New York, cities; Ohio, municipalities; Wisconsin, the state or any of its cities; Rhode Island, the state or any cities or towns.

The amendments which were rejected in New York, (1911) conferred the power upon municipal corporations; Wisconsin, (1914) municipal corporations; California, (1914, 1915, 1918), the state, county, city or town; New Jersey (1915), the state, counties, cities, towns, boroughs, or other municipality or any board, governing body or commission.

While the cities are the governmental agents chiefly interested in obtaining the power of excess condemnation, no reasons have been advanced for excluding other governmental agencies from exercising the power. The most comprehensive provision dealing with this matter is contained in the proposed amendment which was defeated in New Jersey in 1915. The purposes for which the power of excess condemnation are to be authorized would affect the question here considered. In any event if the power is to be granted it should be conferred upon all those governmental agencies which may possibly have to deal with the particular problem or problems sought to be solved by the grant of the power of excess condemnation.

(3) Kind of public improvement to which the power is to be applied. There is considerable variation in the amendments which have been proposed or adopted as to the kind of improve-

ment to which the power of excess condemnation is to be applied. In general there are two types of provisions: those which specify in detail the kind of improvement in connection with which the power is to be exercised and those which are phrased generally so as to apply to any public improvement.

The provisions in amendments which were adopted are as follows: Massachusetts, "laying out, widening or relocating highways or streets"; New York, "laying out, widening, extending or relocating parks, public places, highways or streets"; Rhode Island, "establishing, laying out, widening, extending or relocating of public highways, streets, places, parks or parkways"; Ohio, appropriations of property for public use—the provision seems to include all local improvements of municipalities; Wisconsin, establishing, laying out, widening, enlarging, extending and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings.

Proposed amendments which failed of adoption: New York, property taken for public use by municipal corporations; Wisconsin, property taken for public use by municipal corporations; California, any proposed improvement; New Jersey, laying out, widening, extending or relocating parks, public places, highways or streets.

While most of the discussion of excess condemnation concerns the protection of streets and parks, there have been few, if any, reasons given for excluding other public improvements.

(4) Quantity of land authorized to be taken. As to the amount of land which may be taken in excess there are, in general, two types of provisions: those which limit the taking of land to an amount sufficient to form suitable building sites and those which place either no limitation or a very general one on the amount. Amendments in Massachusetts, New York, Rhode Island, and the proposed but defeated amendment in New Jersey restricted the amount to be taken to suitable building sites. The Ohio amendment and the amendment defeated in California in 1918 placed no limitation upon the amount to be taken. In Wisconsin, the amount of land is restricted to lands in and about, along, and leading to, any improvement. Of the amendments which failed: New York restricted the taking of land to those that were additional, adjoining and neighboring; Wisconsin, additional, adjoining and neighboring; California, (1914 and 1915) additional, adjoining or neighboring.

If it is sought to provide for the lot remnant problem only, a provision which limits the taking to an amount sufficient to make suitable building sites is appropriate. If it is sought to authorize the taking of excess land for the purpose of controlling the character of the neighborhood adjoining a public improvement, a provision which does not attempt to place a definite limit on the amount that may be taken would accomplish this object, but such a provision could also be construed as authorizing the taking of land for purposes of recoument. This result might be avoided if the

clause authorized the sale of the excess only under restrictions appropriate to preserve the improvement, or it might also be accomplished by an unlimited grant or by a grant, limited to the land which was adjoining or neighboring, with the proviso that the amount of land taken in excess be no more in extent than would be sufficient to protect and preserve the improvement. The clause authorizing the sale under restrictions could then be added.

(5) Interest in land to be taken. The majority of amendments make no provisions as regards the interest in land that may be acquired. Ohio authorizes the condemning authorities to appropriate or acquire; Wisconsin, acquire by gift, purchase or condemnation; New York, to take; Massachusetts, take in fee; Rhode Island, acquire or take in fee. The amendments which failed in New York, Wisconsin and New Jersey used the word "take" only. California, (1914, 1915, 1918) "take and appropriate in fee simple under the power of eminent domain." Under the general rule, a fee could be taken under any of these provisions if the legislature so provided. No proposed amendment has undertaken to limit the taking to easements, but the amendment adopted in Rhode Island provides that the person from whom the excess is taken shall have the first right to purchase the land.

(6) Disposition of the surplus. In all the amendments except those which were defeated in New York and Wisconsin, there is a clause authorizing the sale or leasing of the excess land. The Rhode Island provision, which in effect gives the former owner an option to repurchase, would seem to be desirable where the land is taken for the purpose of sale under building restrictions, but not where the land is taken for the purpose of making suitable building sites, for in this case the object of the taking is to bring about a union of two or more properties which are separately owned.

(7) Restrictions as to use. If only such excess land is taken as is necessary to make suitable building sites, it will not always be necessary to resell the excess under restrictions. In those states where the taking is restricted to lot remnants, the usual provision authorizes the sale of the land with or without restrictions. Such provisions are found in the amendments adopted in Massachusetts and Rhode Island. The New York amendment contains no provision dealing with the matter of restrictions, nor do the amendments which were defeated in New York in 1911, Wisconsin in 1914, and in California in 1918. The proposal defeated in New Jersey, which was limited to the taking of lot remnants, provided for sale under reasonable restrictions. Those amendments which authorize the taking of excess land for the purpose of protecting and controlling the character of the neighborhood obviously must contain provisions authorizing the sale of the excess under restrictions. Ohio provides that the surplus may be sold with such restrictions as shall be appropriate to preserve the improvement made; the Wisconsin amendment authorizes the sale of the surplus with reservations concerning the future use and occupation of such real estate so as to protect such public improvements and their environs and to preserve the view, appearance, light, air and usefulness of such public works; the California proposal, defeated in

1913 and 1915, authorized the sale under such terms and restrictions as may be appropriate to preserve or further the improvement made or proposed to be made; the California amendment, defeated in 1918, authorized the sale under such procedure as is prescribed by law. Amendments defeated in New York and in Wisconsin contained no provisions relating to restrictions. For simplicity and clearness the Ohio provision seems preferable, but there should be added to it a provision which will give to the former owner the first right to repurchase.

VI. CONCLUSION.

Changes introduced by the Constitution of 1870. The constitutions of 1818 and 1848 contained but one clause dealing with the power of eminent domain. This provision required the payment of just compensation when property was taken for public use. Several changes were introduced in the constitution of 1870: (1) The right to compensation was extended to cases where property was merely damaged for public use. This action has since been followed by about half of the states. (2) As a second result of this change the court has held that where a part of a tract of land has been taken and the remainder part has been specially benefited, the amount of this special benefit cannot be set off against the value of the part taken, thus changing the constitutional rule as it was under the constitutions of 1818 and 1848. As applied to private corporations this is the general rule in other states, but in about half of the states, in takings by the state or by other governmental agencies, special benefits to the part of a tract not taken may be set off against the value of the part taken. It has been urged that this rule should be changed primarily in the interest of all governmental agencies which do not possess the power of levying special assessments, i. e., all agencies other than cities, towns, villages, park districts and drainage districts. (3) Jury trial to determine compensation was for the first time guaranteed in the constitution of 1870. The state is exempted from this provision but it does apply to all other governmental agencies. Similar provisions are found in about one-third of the states, but in most of these states the provisions do not apply to governmental agencies. The provision has been the subject of some criticism in other states. (4) The constitution of 1870 provided that the fee of land taken for railroad tracks should remain in the owner. This provision is found in the constitutions of but three other states. Since the abandonment of an easement causes the property to revert to the owner of the fee, it has been urged that this provision should be eliminated and that the roads be given power to condemn the fee in lands. One unfortunate effect of the existing provisions is that in the carrying out of general municipal improvement plans, railroads cannot be induced nor compelled to relocate their tracks where a relocation would be desirable. There is no other constitutional limitation upon the power of the general assembly to condemn the fee, but the Supreme Court has held that a statute which in general terms grants the power to condemn land does not authorize the taking of a fee. The inference is that the general assembly has power to authorize the taking of the fee but there never has been any express holding in this state that the fee may be taken. There is a

possibility that the Supreme Court may construe the eminent domain clause in the constitution as preventing the taking of a fee unless the court finds, in the particular case, that a fee is necessary. (5) A separate section was inserted in the constitution of 1870 which authorizes the condemnation of the property and franchises of corporations and which guarantees a jury trial on the issue of compensation in proceedings by and against corporations. This provision is found in several states but the Supreme Court of Illinois has said that this provision adds nothing to the general eminent domain clause. The elimination of this clause, however, might be construed as affecting the law in some way. (6) The taking and damaging of lands for drainage purposes was authorized by a separate provision in the constitution of 1870. The clause was later amended so as to authorize the organization of drainage districts, and the levying of special assessments to pay the cost of such improvements. Similar provisions are found in the constitutions of about one-third of the states; in many others the same result is attainable under the general eminent domain clause. (7) A special provision was inserted in the constitution of 1870 which authorized the taking of land for roads for public and for private use. It had been held, under the constitution of 1848, that the taking of land for a private road was not a public use and that a statute which authorized such a taking was unconstitutional. Similar provisions are found in several states.

Construction placed upon other features of the eminent domain clause. (1) Property is taken for public use when it is taken by an agency of the state and actually employed by it in the discharge of governmental functions. It is also taken for public use when the property so acquired is made available for actual use, by the public or by a relatively large group of persons, under governmental supervision, in a manner which is in furtherance of an otherwise legitimate governmental function exercised in the interests of the general welfare. Public parks furnish an illustration. Property is also taken for public use when it is actually employed by private persons in connection with enterprises in which the public possesses such an interest that the law is justified in imposing upon them the duty to serve all upon conditions prescribed by law. The taking of property by public service companies is justified on this ground. Property is also taken for public use when it is actually employed by private persons in some private enterprise, not a public utility, but which is of a nature that the interests of the public are thereby promoted. The taking of land which is both for private and public use as a road and the taking of land for drainage purposes fall within this group, although the power to take in these cases is based on express provisions of the constitution of Illinois. Generally speaking, the term "public use" as used in the general eminent domain clause does not include such purposes.

(2) Property already devoted to public use may be taken for other public uses. It is for the law-making body to declare under what circumstances such property may be taken for other uses. Under a general grant of the power of eminent domain the courts hold that property already devoted to public use may be taken only when the new use will be a different use. Except in the typical cases of the projection of railways across streets and other railways and of streets across railways, the courts are strongly inclined to hold that a general grant of power to condemn does not authorize a taking of property already devoted to public use.

One situation in this state calls for special mention. In the case of *South Park Commissioners v. Ward*,¹ the court held that an act of the General Assembly was unconstitutional which expressly authorized the South Park Commissioners to condemn the rights of property owners along Michigan Avenue, to have Grant Park kept free from buildings, which rights were acquired under a dedication to public use of the land comprising Grant Park under restrictions imposed by the dedicators—the Canal Commissioners and the United States—and accepted by the City of Chicago; the statute also authorized the South Park Commissioners to permit the construction, in the park, of any museum then located in a public park. The decision was strongly dissented from by three members of the court. Some commentators upon the case justify the decision upon the ground, (a) that the state had no power to rid itself of these restrictions because they were imposed by the United States; and (b) it is possible that the decision means that a governmental agency cannot be authorized to condemn land for the purpose of aiding a private corporation, the Field Museum, which did not itself possess the power of eminent domain. The decision was not based upon either of these grounds. Other comments upon the case are to the effect that it is without precedent in the law of eminent domain. The importance of the case lies in the fact that the decision may be interpreted as meaning that in all cases where property is dedicated to public use under restrictions and accepted by the state or by any of its agencies, the state is powerless to remove the restrictions, even though the necessity therefor may have ceased because of changed conditions. Such a result as this might often prove to be an obstacle of a serious nature.

(3) A taking of property includes the taking of the fee and of easements in land; the imposition of additional servitudes upon land; easements in which, for specified purposes, have been previously acquired; the taking of riparian rights; the removal of support of land, and all direct physical injuries to the property, such as the overflowing of lands. When part of a tract is taken and the remaining part is injuriously affected, the consequential injury constitutes a taking. These rules have remained substantially unchanged under all three constitutions and are practically the same as in other states.

(4) The damaging of property consists in the infliction of special injury to rights, usually of a non-physical character, the effect, in

¹ 248 Ill. 299: (1911).

general, being to impose liability for the damaging of property for public use to the same extent as is imposed upon private persons at common law for causing similar injuries. There is no right to compensation for speculative damage or for general damage, such as is sustained by the community in common, or for the destruction or damaging of property under the police power. Damage inflicted under the police power is usually of a general character and therefore no right to compensation exists, or where special, as in the case of the killing of diseased animals, there is no constitutional right to compensation on the theory that no right, which is superior to the public needs, has been infringed. These rules are practically the same in other states where the damage clause is found in the eminent domain provision.

(5) The measure of compensation in case of a taking is the fair cash market value of the property taken.

(6) The measure of compensation where part of a tract is taken and the part not taken is damaged, is the fair cash market value of the part taken, plus the difference between the fair cash market value of the part not taken before and after the taking.

(7) The measure of compensation when part of a tract is taken, and the part not taken is specially benefited, is the fair cash market value of the part actually taken. The special benefit cannot be set off against the value of the part taken. Under the constitutions of 1818 and 1848 such special benefit could be set off. The rule in most states, either as a matter of construction or of special constitutional provision, is that, in takings by governmental agencies, special benefit may be set off against the value of the part taken. It has been argued in this state, that, in as much as all governmental agencies do not possess the power of levying special assessments, the rule in Illinois should be changed so as to allow the set-off of benefits by governmental agencies.

(8) Where part of a tract is taken, the elements of special benefit to the part not taken may be considered as against special damage to such part in order to determine whether the parcel not taken has been specially damaged or specially benefited.

(9) Where no property has been taken and where the right to compensation is based on the ground that the property has been "damaged", elements of special benefit may also be taken in consideration, i.e. set-off against special damage, in determining whether the tract has been damaged.

(10) A taking of property will be enjoined until compensation is paid, although after compensation has been ascertained in the condemnation proceeding, the condemning authority may enter into the temporary possession of the premises upon giving the required appeal bond. This rule has always been in force in Illinois, although none of the constitutions have expressly required prepayment. The Attorney General has ruled that this requirement does not apply to takings by the state in its corporate capacity. The rule in most states where there exists no express provision on the subject is that the giving of security is alone sufficient to justify a taking. A right to

sue the state or other governmental agency is usually deemed an adequate security in other states, but in takings by private corporations a deposit of money in court or the giving of a bond approved by the court is required. In many states there are special constitutional provisions relating to the time of payment. A few states require prepayment in all cases. A greater number require prepayment only in takings by private corporations. Several states require either prepayment or deposit, or prepayment or security.

(11) The damaging of property will not be enjoined. There is no constitutional right to prepayment. The owner is remitted to his action at law to recover compensation after the damage has been inflicted. In New York and a few other states it is held that the construction of an elevated railroad upon a public street, the fee of which is in the public, amounts to a taking of the abutters' easements of light and air in the street and that therefore the construction of the road will be enjoined until compensation is made. In Illinois and most states the construction of a road under these circumstances does not amount to a taking, but constitutes damage merely. The abutting owners' remedy is in these states an action for damages after the injury has been sustained.

(12) Except in so far as special benefits may be set off against special damage to parcels of land not taken, compensation must be in money.

(13) The determination of what constitutes a public use is for the courts. The question of the propriety of delegating the power of eminent domain is for the legislative branch. The question of the necessity for and of the amount of a particular taking is, in the first instance, for the condemning authority in which is vested a wide range of discretion, but this discretion is subject to review by the courts. In a few states there exist constitutional provisions which make the question of the necessity for a taking one for the jury.

Extension of the power of eminent domain. In recent years a number of constitutional provisions have been adopted which extend state functions. In many instances the power of eminent domain is not expressly conferred, in others this power is designated as a means of accomplishing the new objects. These provisions, in general, relate to the conservation of natural resources, to the conduct of certain types of business enterprises, and to the accomplishment of objects which are generally the subject of police regulations only. Constitutional provisions which expressly authorize the use of the power of eminent domain relate to the conservation of natural resources, the acquisition of public utilities by cities and to housing projects.

Excess condemnation. The proposal has been made to confer upon agencies of the state, chiefly municipalities, the power to

condemn land in excess of that actually needed for the purpose of a particular improvement. The power of excess condemnation, as thus defined, in general, may be employed with three distinct objects in view.

(1) The power may be exercised in connection with the opening or widening of streets to condemn an amount of land lying outside the new street sufficient to make suitable building sites which may front on the new thoroughfare. Lot remnants, which are invariably left in such cases, are thus united with the property in the rear. The history of the lot remnant problem shows that in the majority of instances the lot remnant when left in private ownership will not be promptly attached to the rear property. The result is that the usefulness of the street is greatly impaired. The practice of condemning such areas is common in Europe. The power to condemn land in excess, in this country, cannot be granted by statute. Constitutional amendments conferring the power have been adopted in Massachusetts, Ohio, Wisconsin, New York and Rhode Island. A proposed amendment of this character failed of adoption in New Jersey. The city of Chicago is chiefly interested in this proposal. Civic bodies in Chicago strongly urge its adoption. Where this question has been investigated by legislative committees or by individuals the conclusions reached have been favorable.

(2) It is also proposed to employ the power of excess condemnation for the purpose of controlling the character of neighborhoods surrounding a newly constructed improvement. In connection with the opening or widening of streets, the construction of public buildings and the laying out of parks, the proposal is to allow the city to condemn areas of land abutting on such improvements, and after taking the land in fee the property is to be sold to private persons under restrictions in the deeds. The size, type, location, and use of buildings in the area taken over are thus to be made subject to the control of the condemning authority. Constitutional amendments which authorize this use of the power of eminent domain have been adopted in Ohio and Wisconsin, but such proposals have failed of adoption in California and New York. In all of these cases the amendments were so drafted as to authorize a taking beyond that which was actually necessary for the accomplishment of the objects sought. The use of eminent domain for this purpose is common in Europe. Commissions in this country which have investigated this aspect of excess condemnation generally favor it. Individual writers usually take the same position, though it is thought by some that the power would not be properly exercised, that it would be too uncertain a financial venture for the city, and that the police power is adequate.

(3) The proposal has also been made to employ excess condemnation for the purpose of recouping the cost of improvements. Land which had been or would be enhanced in value by reason of the improvement would be taken over by the city and later sold for the purpose of meeting the cost of an improvement or for the

purpose of making a profit. The policy of condemning land for purposes of recouping cost has never been adopted in this country. It has been used extensively in European countries, but has not proved to be a financial success. Generally, the city has lost money on such ventures. The property taken over has not sold for as much as was anticipated. The practice of levying special assessments is not common in Europe, but this method of meeting the cost of public improvements is being looked upon with greater favor. In this country, where the practice of levying special assessments has proved to be a success, the use of excess condemnation for recouping cost is not favored. The financial risk is deemed too great. In every state where a proposed constitutional provision has been worded broadly enough to authorize the taking of land for resale for the purpose of intercepting the increment of value added by the improvement, the proposal has been defeated.

APPENDIX NO. 1. REFERENCES.

- Massachusetts Constitutional Convention, 1917. Bulletin No. 19. Excess Condemnation.
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- Swan, Herbert S. Excess Condemnation, a report of the committee on Taxation of the City of New York, with a report prepared by Herbert S. Swan for the National Municipal League, New York. 1915.

APPENDIX NO. 2. ILLINOIS EMINENT DOMAIN PROVISIONS.

Art. II, Sec. 13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

Art. IV, Sec. 30. The general assembly may provide for establishing and opening roads and cartways, connected with a public road, for private and public use.

Art. IV, Sec. 31. The general assembly may pass laws permitting the owners of lands to construct drains, ditches and levees for agricultural, sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts, and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state, by special assessments upon the property benefited thereby. (As amended, 1878).

Art. XI, Sec. 14. The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

APPENDIX NO. 3. CONSTITUTIONAL AMENDMENTS EXTENDING POWER OF EMINENT DOMAIN.

1. Massachusetts.

Amendment of 1911, Art. XXXIX of Amendments. The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the Commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street; provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

Amendment of 1915, Art. XLIII of Amendments. The general court shall have power to authorize the commonwealth to take land and to hold, improve, subdivide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens; provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

Amendment of 1918, Art. XLIX of Amendments. The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof, and to enact legislation necessary or expedient therefor.

Art. L. of Amendments. Advertising on public ways, in public places, and on private property within public view may be regulated and restricted by law.

Art. LX of Amendments. The general court shall have power to limit buildings according to their use or construction to specified districts of cities and towns.

2. New York, 1913.

Art. 1, Sec. 7. The legislature may authorize cities to take more land and property than is needed for actual construction in the laying

out, widening, extending or relocating parks, public places, highways or streets; provided, however, that after the additional land and property so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street. After so much of the land and property has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased.

3. Rhode Island, 1916.

Art. XVII of amendments. The general assembly may authorize the acquiring or taking in fee by the state, or by any cities or towns, of more land and property than is needed for actual construction in the establishing, laying out, widening, extending, or re-locating of public highways, streets, places, parks or parkways: Provided, however, that the additional land and property so authorized to be acquired or taken shall be no more in extent than would be sufficient to form suitable building sites abutting on such public highway, street, place, park or parkway. After so much of the land and property has been appropriated for such public highway, street, place, park or parkway as is needed therefor, the remainder may be held and improved for any public purpose or purposes, or may be sold or leased for value with or without suitable restrictions, and in case of any such sale or lease the person or persons from whom such remainder was taken shall have the first right to purchase or lease the same upon such terms as the state or city or town is willing to sell or lease the same.

4. Ohio, 1912.

Art. XVIII, Sec. 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired, but said bonds shall be a lien only against the property so acquired, for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

5. Wisconsin, 1912.

Art. XI, Sec. 3a. The State or any of its cities may acquire by gift, purchase, or condemnation lands for establishing, laying

out, widening, enlarging, extending and maintaining memorial grounds, streets, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; and after the establishment, lay out, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works.

APPENDIX NO. 4. PROPOSED AMENDMENTS REJECTED BY PEOPLE.

1. New Jersey, 1915.

The legislature may authorize the state, or counties, cities, towns, boroughs or other municipalities, or any board, governing body or commission of the same, to take more land and property than is needed for actual construction in the laying out, widening, extending or re-locating the parks, public places, highways or streets; provided, however, that the additional lands and properties so authorized to be taken shall be no more than sufficient to form suitable building sites abutting on such park, public place, highway or street, after so much of the land or property taken has been appropriated for such park, public place, highway or street as is needed therefor, the remainder may be sold or leased and reasonable restrictions imposed.

2. California, 1913, 1915, 1918.

The State or any county, city and county or incorporated city or town, taking or appropriating property within the limits thereof for public use for any proposed public improvement may also take and appropriate under the power of eminent domain, additional, adjoining or neighboring property within the limits thereof, in excess of that actually to be devoted to or occupied by the proposed improvement, and such additional land so taken shall be deemed to be taken for public use. The estates in such additional property so taken shall be a fee simple estate, and such additional property may be sold, leased or otherwise disposed of in whole or in part, under such terms and restrictions as may be appropriate to preserve or further the improvement made or proposed to be made. For the purpose of acquiring, constructing, enlarging or improving a public park, playground, boulevard, street, building or ground therefor, any county, city and county, incorporated city or town may condemn lands outside of its boundaries and within the distance of ten miles therefrom, provided that no land within any other county, city and county, incorporated city or town shall be taken without the consent to be given in any manner that may be provided by law. The conditions under which such additional property may be taken or appropriated, the means and method of providing payment therefor and the terms and restrictions under which such property may be sold, leased, or otherwise disposed of shall be prescribed by general law.

1918 proposal, Sec. 20: The State, any county, city and county, or municipality may acquire, by eminent domain, the title in fee simple to property in excess of that actually needed for an improvement. Property so acquired in excess of that actually needed for such improvement, shall be deemed to be acquired for a public use. The procedure for such acquisition and the use, sale and lease or other disposition of property so acquired shall be prescribed by general law.

3. New York, 1911.

When private property shall be taken for public use by a municipal corporation, additional, adjoining and neighboring property may be taken. Property thus taken shall be deemed taken for a public use.

4. Wisconsin, 1914.

When private property shall be taken for public use by a municipal corporation, additional, adjoining and neighboring property may be taken. Property thus taken shall be deemed taken for a public use.

APPENDIX NO. 5. AMENDMENTS PROPOSED IN, BUT NOT SUBMITTED BY, LEGISLATURES.

1. Massachusetts, 1914.

For the purpose of establishing parks, public reservations, wharves, and docks the general court may by special acts authorize the taking by the commonwealth, or by a county, city or town, or by a commission authorized by a special act of the general court, of more land than is needed for the actual construction of such parks, reservations, wharves, or docks provided the land and property authorized so to be taken are specified in the act; and after so much of the land or property has been appropriated for such parks, reservations, wharves, or docks as is needed therefor, the commonwealth, county, city, town or commission, as the case may be, may hold, lease, sell or use, with or without restrictions, the remainder thereof.

2. Pennsylvania, 1915.

The State, or any municipality thereof, acquiring or appropriating property or rights over or in property for public use, may, in furtherance of its plans for the acquisition and public use of such property or rights, and subject to such restrictions as the legislature may from time to time impose, appropriate an excess of property over that actually to be occupied or used for public use, and may thereafter sell or lease such excess, and impose on the property so sold or leased any restrictions appropriate to preserve or enhance the benefit to the public of the property actually occupied or used.

CONSTITUTIONAL CONVENTION

BULLETIN No. 8

The Legislative Department



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I. SUMMARY.

The Illinois General Assembly is similar in organization and powers to the legislatures of the other states. In substantially all states the legislatures are hedged about by limitations as to procedure and powers, in such a manner as to make legislation a hazardous task. In some states steps have been taken toward establishing closer relations between the governor and the legislature, and in others unsuccessful efforts have been made in recent years to change the form of state legislative organization. With respect to legislative matters several types of problems will present themselves to the constitutional convention :

(a) That as to whether any change shall be made in the present form of legislative organization, and in the relations between the General Assembly and the governor.

(b) That as to the general scope of legislative powers. There has been a tendency for many years to hedge state legislatures about by numerous restrictions, and to frame complex constitutions which themselves deal with many matters of legislative detail.

(c) There will be a number of problems local to Illinois, and others having to do with changes in the detail of the present constitution. Within this group the problems likely to attract greatest interest are those of Cook County representation and of cumulative voting. Equally important, however, are the questions as to whether changes shall be made in present constitutional provisions with respect to amendment by reference, as to whether there shall continue to be three readings at large of bills in each house, and as to the time when laws shall come into effect.

An analysis of the initiative and referendum will be found in a bulletin dealing with that subject, but comment is made in this bulletin upon the relationship of the initiative and referendum to the representative legislature. A discussion of appropriation methods will be found in the bulletin dealing with state and local finance.

II. HISTORICAL OUTLINE OF DEVELOPMENT IN ILLINOIS.

Organization and apportionment. Illinois began its career as a state with a two-chambered legislature holding biennial regular sessions. The powers conferred upon the two houses were substantially identical, and the chief distinctions between the two houses under the constitution of 1818 were that the house was larger than the senate, and that senators were elected for a four-year term, one-half retiring each two years, whereas members of the house were elected for a two-year term.

In the early history of the two-chambered legislative system, some distinction was made between the powers of the two houses, particularly with respect to the initiation of revenue bills; and a fairly sharp distinction was also made as to the types of interests or areas represented in each of the two houses. Such distinctions appeared in the state constitutions adopted from 1776 to 1780, but were tending to disappear by 1818, although in about twenty states the lower house still retains the exclusive right to originate revenue bills, as does also the lower house of the federal congress.

The differences between the two houses which appeared in the constitution of 1818 have, with some variations, been preserved in the later constitutions. The constitution of 1818 prescribed the age of 21 for representatives and the age of 25 for senators. The constitution of 1848 varied this requirement, prescribing the age of 25 for representatives and that of 30 for senators, but the constitution of 1870 returned to the original rule as laid down in 1818. With respect to the method of election, the primary distinction, as suggested above, is that senators are elected for four years, and that since the beginning of statehood the plan has been adopted of having one-half, or substantially one-half, of the senators retire each two years.

Perhaps the most essential distinction, however, between the two houses is that of size. The constitution of 1818 prescribed that the house of representatives should not have less than 27 members, nor more than 36 members until the state reached a population of 100,000; and provided that the senate have not less than one-third nor more than one-half the number of representatives. The constitution of 1848 limited the senate membership to 25, and provided a house membership of 75, which might be increased to 100 with the increase of the state's population. Under the rule laid down in the constitution, however, it was provided that the number should be 75 until the state had a population of 1,000,000. When the state reached such a population, five additional members might be provided, and thereafter five additional

members for each additional 500,000 population. Under this rule the lower house increased from 75 to 85 between 1848 and 1870.

The proposed constitution of 1862 provided for 33 senators and 102 representatives, but with a possible increase to 150 for the combined membership of the two houses. The constitution of 1870 provided for the submission to the people of two alternative methods of choosing the lower house, and the plan of cumulative voting was adopted, by which three members of the lower house were to be elected from each senatorial district, 51 senatorial districts being provided by the constitution itself. The other alternative submitted to, but not adopted by, the people would have permitted a somewhat larger house of representatives, but the relationship in numbers between the house and senate would not have been materially different. In the provisions of the constitution of 1870 for the election of the first house of representatives under that constitution, a temporary apportionment was provided for, and under this apportionment the Illinois house of representatives reached its largest size, having for the period from 1870 to 1872, 177 members while the senate by the temporary provisions of the same constitution had a membership of 50. In the first and second Illinois general assemblies, the senate was composed of 14 members and the house, of twenty-eight members, and by 1848 the senate membership increased to 40, and the house membership to about three times this number. During the larger part of the period from 1848 to 1870 the senate was composed of 25 members and the house of 75 members, although from 1861 to 1870 the house membership was 85.

Under the constitution of 1870 there is but one series of districts for the election of members of the two houses, three representatives being elected under the cumulative system from each senatorial district. Before 1870, however, there was no consistent policy with respect to the maintaining of a single series of districts, and from 1848 to 1870 the smaller areas for the election of members of the house of representatives did not lie entirely within the larger senatorial districts. That is, the smaller areas for the election of members of the house of representatives in many cases cut across the lines of senatorial districts. The plan of the Illinois constitution of 1870 has a distinct advantage in that it permits the development of some fairly permanent community interest in legislative representation within a particular area. Whether the cumulative system is to be retained or not there is a good deal of value in having one series of districts for the election of members of the house and senate.

Under the apportionment of 1818 no county had more than one senator, and in one case two counties were united for the election of a senator, but each county had at least one representative. Where a county had more than one representative the election of such representatives was from the county at large. Under the apportionment which became effective in 1821¹ counties were united for the election of senators where a single county was not entitled to a senator, and each county had members of the house of representatives apportioned to it separately, each county having at least one representative. This

¹ Laws 1821, p. 154. Act approved Feb. 14, 1821.

plan resulted in having all representative areas lie within the larger senatorial areas, but this was not true under the apportionment of 1826. Under the reapportionment in force Feb. 7, 1831,² representative districts were in all cases embraced within the limits of the larger senatorial districts for the same territory. The apportionment in force January 14, 1836³ was the first to adopt a definite population basis for the apportionment of senators and representatives, this basis being 7,000 white inhabitants for members of the senate and 3,000 white inhabitants for members of the house. The apportionment act of 1836, (as also earlier apportionment acts) set out the representative and senatorial districts in detail. Each county which had more than one representative elected its representatives at large. The representative districts were in each case under the apportionment of 1836 within the limits of the larger senatorial districts, although Iroquois County was authorized to vote for the senator to be elected in LaSalle County, and was not in terms made a part of the senatorial district including LaSalle County. Under the apportionment of 1836 first appeared in Illinois the plan of so-called floating members. The counties of Crawford and Jasper together at one election were to choose one representative and at the next regular election, two representatives, alternating from one representative to two in each two-year period.

The apportionment act in force February 26, 1841⁴ also set out a distinct population basis for the distribution of members, this basis now being raised to 12,000 white inhabitants for members of the senate and 4,000 white inhabitants for members of the house of representatives. Representative and senatorial districts were set out in detail in the apportionment act and all representative districts were within the lines of the senatorial districts covering the same territory. Districts for the election of representatives, however, were not uniformly single districts. Sometimes two counties were combined for the election of two representatives and in some of these cases, but not in all, the statute provided that one of the two representatives should be chosen from each county. One case of "floating" representation occurred: Schuyler County was given one representative, Brown County, one, and the two counties together, one additional member. This type of floating representation, it should be noted, differs from the type of "floating" representation provided for in the apportionment of 1836, by which a district elected one representative at one election and two representatives at the next succeeding election. The apportionment of 1846 was similar in plan to that of 1841, but the basis of representation was raised to 19,000 white inhabitants for each senator and 6,500 white inhabitants for each representative.

The constitution of 1848 contained a detailed apportionment of the state into 25 senatorial districts, and 54 representative districts, the 75 representatives being elected from 54 districts. In this constitutional apportionment no effort was made to keep representative districts within the larger limits of senatorial dis-

² Laws 1830-31, p. 5.

³ Laws 1835-36, p. 268.

⁴ Laws 1840-41, p. 23.

tricts, and where more than one representative was assigned to a district the representatives were apparently elected at large from the district.

An apportionment act in force Feb. 27, 1854⁵ made the first apportionment under the constitution of 1848, increasing the representative districts to 58 but making no effort to keep such districts within the same limits as those prescribed for the senatorial districts. An apportionment act of 1861⁶ increased the number of representatives to 85 and provided for their election from 61 representative districts. This apportionment act made no effort to keep representative districts within limits of the larger senatorial districts. In the apportionments under the constitution of 1848 there were two series of districts more or less independent of each other in territorial area—one for the election of members of the house of representatives and the other for the election of members of the senate.

With respect to the increase in membership of the two houses of the General Assembly, it should also be remarked that throughout most of the history of Illinois as a state, the number of members in the two houses has been definitely limited by constitutional provision. Such a limitation, based either upon population or upon a specific limitation of the number of members, has the advantage of preventing a constant increase in the size of legislative bodies. The plan has a disadvantage, in that when certain areas increase less rapidly in population than does the state as a whole, such areas must at periodical intervals lose not only in proportional representation with respect to the rest of the state, but also in the actual number of members which they elect. There is no limitation upon the number of members in the United States house of representatives; and in the apportionment among the states at each decennial reapportionment, each state objects to having an actual reduction in the number of its members, although it makes (and can make) no valid objection to the loss of representation in proportion to the rest of the country, if it has been increasing less rapidly in population. In consequence of this attitude it has been impossible to prevent the increase of the number of members of the federal house of representatives each ten years, because of the fact that if states whose population is slowly increasing are to retain the same actual number of representatives, the states whose population is more rapidly increasing must on the basis of the constitutional provision obtain a greater number of actual members. The Illinois plan of imposing some type of constitutional limitation is distinctly valuable in preventing the unnecessary increase in the membership of the two houses, although it does have the political disadvantage of forcing a readjustment of areas and of actually reducing the representation of parts of the state which are either not increasing in population or are increasing less rapidly than the rest of the state.

⁵ Laws 1854, p. 3.

⁶ Laws 1861, p. 16.

The constitution of 1818 imposed no conditions upon the frequency of apportioning the state for the election of members of the house and senate. The constitution of 1848 provided for a state census in the interval between federal censuses and permitted reapportionment after either census. As has already been suggested, reapportionment before 1870, aside from those in the constitutions themselves, took place in 1821, 1826, 1831, 1836, 1841, 1846, 1854 and 1861. The constitution of 1870 prescribes a reapportionment every ten years beginning with the year 1871, and this provision has been construed as limiting the General Assembly to a single reapportionment in each ten-year period⁷ following a federal census.

However, the provision regarding decennial apportionments although mandatory in form is necessarily addressed to the discretion of the General Assembly. No reapportionment has taken place since 1901.

Powers. The constitution of 1818 imposed substantially no limits upon the power of the General Assembly and in fact gave to the General Assembly not only legislative power but also a rather wide appointing power as well. The experience of the state between 1818 and 1848 with respect to state banking (which was expressly commanded by the constitution of 1818) and with respect to internal improvements, led to the imposition of strict limitations in the constitution of 1848 upon the General Assembly with reference to these matters. Some difficulties which had arisen with respect to methods of legislation and with respect to local and private laws led to the imposition of limitations with reference to these matters in 1848, although such limitations were not at all strict. The constitution of 1848 did, however, contain a large amount of detail with respect to the organization of the courts and with respect to other matters and in this manner reduced the power of the General Assembly with respect to such matters. Between 1848 and 1870, the evil of special legislation became more pronounced than before 1848, and the constitution of 1870 was so framed as practically to destroy the General Assembly's power in this field. Between 1848 and 1870 also, municipalities of the state had incurred large indebtedness, primarily in aid of railroads, and the constitution of 1870 was so framed as to prohibit such aid for the future, and in addition debt limits were placed upon municipal corporations.

Aside from the matters discussed above and the large mass of temporary detail which had been placed in the constitutions of 1848 and 1870, the most important development with respect to legislative authority in this state has been that regarding the governor's veto power. In the constitution of 1818 a veto power was vested in a council of revision composed of the governor and the

⁷ *People v. Hutchinson*, 172 Ill. 486 (1898).

judges of the Supreme Court, but such power could be overcome by a vote of a majority of the members elected to each house of the General Assembly. By the constitution of 1848 the council of revision was abolished and a veto power was vested in the governor subject, however, to being overcome by a majority of the members elected to each of the two houses. In 1870 the governor's veto power was materially increased by the constitutional provision that it should be overcome only by a vote of two-thirds of all of the members elected to each house, and in 1884 his power was still further increased by the adoption of a constitutional amendment permitting the veto of items in appropriation acts.

Another important matter bearing upon the history of the legislative department in Illinois is that which relates to the appointing power of the General Assembly. Under the constitution of 1818 this appointing power was large and there were no limitations upon its extension when the General Assembly created new offices. The constitution of 1848 expressly provided that the governor should nominate and, by and with the consent of the senate, appoint all officers whose offices were established by the constitution or which were created by law and whose appointment was not otherwise provided for; and to this provision was added a clause that "no state officer shall be appointed or elected by the general assembly." With the adoption of this constitutional provision, which is repeated in the constitution of 1870, the governor's power of appointment began to be effective, for the General Assembly since 1848 has ordinarily vested the appointing power in the governor when it has created new offices. The appointing power of the General Assembly has, therefore, practically disappeared, and a similar function in connection with the federal government disappeared with the adoption of popular election of United States senators by the 17th amendment to the constitution of the United States, ratified in 1913.

With respect to appointments and removals, however, the power to confirm executive appointments has remained in the senate throughout the three constitutions. The power of impeachment through the bringing of charges by the house of representatives and trial by the senate has also remained, as has the power to remove judges by resolution of the two houses. In order to remove judges, the assent of three-fourths of all the members elected to each house is necessary, whereas the constitution of 1818 provided for removal of judges upon the assent of two-thirds of each branch of the General Assembly, and a somewhat similar provision was contained in the constitution of 1848.

III. ORGANIZATION OF THE TWO HOUSES.

The two-chambered system of legislative organization has prevailed in all of the states of this country, except in Pennsylvania, 1776-1790, Georgia 1777-1789, and Vermont 1777-1836. The legislature in the American colonies was generally composed of two houses, the one house representing the popular element in the colony with members chosen from districts within the colony, and the other house composed of members appointed by and representing the British crown; although in at least three of the colonies this divergence of representation in the two houses did not exist. With legislative bodies of two houses already in existence, it was natural that the framers of the first state constitutions should continue this arrangement, and the organization of the national legislature into two houses (although in that case there was of course a distinct basis of representation justifying such representation) has helped to maintain the two-chambered legislative organization.

The two-chambered legislature. There has in this country been some little discussion in recent years of the proposal to adopt a single-chambered legislature, the arguments for this proposal being based largely upon the fact that there is little actual difference in the basis of representation in the two houses, and upon the further fact that two-chambered legislative bodies are cumbersome and to some extent ineffective. A single-chambered legislature was proposed by constitutional amendment in Oregon in 1912 and 1914, in Oklahoma in 1914, and in Arizona in 1916. All of these proposed amendments have failed of adoption, although upon the amendment in Oklahoma in 1914 there were about 94,000 affirmative votes as against 71,000 negative votes. Governor Hodges of Kansas in a message to the legislature of that state, on March 10, 1913, urged the abolition of the bicameral system and said:

"Two years ago I suggested a single legislative assembly of thirty members from thirty legislative districts. I am now inclined to believe that this number is too large, and that a legislative assembly of one, or at most two, from each congressional district would be amply large. My judgment is that the governor should be ex-officio a member and presiding officer of this assembly, and that it should be permitted to meet in such frequent and regular or adjourned sessions as the exigencies of the public business may demand; that their terms of office be for four or six years, and that they be paid salaries sufficient to justify them in devoting their entire time to the public business."

Governor Hodges' proposal is, of course, an extreme one, even with respect to the question of adopting a single-chambered legislature, for he proposed not merely the adoption of a single-chambered legislature but also that this single-chambered legislature should be a small group of more or less permanent expert legislators. The proposals in Oregon, Arizona and Oklahoma did not go so far as this, and no plan such as that suggested by Governor Hodges has been submitted in any state. The plan submitted in Oregon in 1912¹ contemplated a single-chambered legislature, of which the governor should be a member and of which minority candidates for the governorship should also be members with voting power proportionate to the votes they received as candidates. The Oregon plan contemplated that the single legislative body should consist of sixty elective members with terms of four years, and this single legislative body with the governor as a member was to be subject to the initiative and the referendum in that state.

In advocacy of a single-chambered legislature several arguments have been made. It is said that the present state legislative organization is extremely cumbersome and that such a cumbersome organization is not necessary for a legislature with powers which are distinctly subordinate to the powers of the federal government. It has been urged that in many states members of one house work with the members of the other, so as to defeat legislation, without its being possible to fix the responsibility for such action, and this has, of course, been the case occasionally in the states. It is true, of course, that responsibility for action in passing legislation or for inaction in failing to pass legislation is difficult to place, and that the bicameral system makes the difficulty greater than it might be if there were a more direct responsibility in a single-chambered body.

It is also urged that bills passed by one house of the General Assembly are in most cases passed as a matter of course without amendment in the other house, and there seems some basis for this argument, as indicated by careful studies made in the state of New York and in some other states.² This statement does not have direct application to Illinois, however. An examination of the legislative work of Illinois covering the sessions of 1907, 1909, 1911 and 1913, indicates that each house of the General Assembly does exercise a fairly decisive influence in defeating almost one out of five of the bills passed by the other house. The influence of each house in Illinois in preventing the adoption of bills passed by the other defeats more legislation than does the governor's veto, although the veto power has been vigorously exercised in this state in recent years. For the legislative sessions of 1917 and 1919 in this state the following statement indicates the influence of one house in defeating measures which have passed the other:

¹Public Policy Pamphlet of Oregon, 1912.

²Colvin, D. L., *Bicameral Principle in the New York Legislature*, New York, 1913. Haines, Lynn, *The Minnesota Legislature of 1911*. Minneapolis, 1911. Hiehorn, *Story of the Session of the California Legislature of 1913*. San Francisco, 1913.

Bills	1917	1919
House bills passed the House.....	324	261
House bills passed the Senate.....	271	228
Senate bills passed the Senate.....	239	320
Senate bills passed the House.....	137	242

The larger proportion of bills passed in one house which failed in the other failed because of inaction of the other house rather than because of an actual negative vote, and this should probably be taken into consideration as a mitigation of the influence of one house upon the work of the other. It should also be borne in mind that it is customary in Illinois to introduce the same measure in each house at the same time. In 1917, out of 1041 bills introduced into the house and 612 bills introduced into the senate, 230 were identical bills. In many cases such identical bills will pass each house as introduced in that house, although they are counted as two separate bills. The bill passed by one house would then be passed by the other, and a duplicate bill would be dropped in each such case. It should also be borne in mind that a large number of the duplicate bills introduced relate to appropriations and that in recent years an effort has been made to consolidate minor specific appropriation bills into larger bills, so that the actual number of bills which passed one house and which did not pass the other may really upon analysis have little bearing upon the influence of one house with respect to the work of the other.

With respect to the influence of one house upon the work of the other, the most decisive consideration is that as to the extent to which bills passed by one house are amended and passed in the other house, and finally become law either as so amended or with changes resulting from the action of the second house. A close study of the work of the Illinois General Assembly indicates that a large number of the laws enacted by the two houses are passed with amendments proposed in the house which last acts upon them. It is substantially impossible to work out a statistical table illustrating the influence of one house upon the bills passed by the other house, but this influence should be borne in mind in connection with the whole problem of the proposal for a single-chambered legislative body.

With respect to the work of legislative bodies in this country, it should also be said that in some states the two-chambered system seems to have proved a means of shifting responsibility for legislation or for legislative inaction, but that in Illinois each house has had a definite and positive influence in recent years, at least, upon the form of legislation finally enacted.

In favor of a single-chambered legislature it is argued that such a proposal is in effect not a radical one, and that such a system has been adopted in most of the states which go to make up other federal governments. In the United States and in the Australian Commonwealth all of the states have two-chambered legislatures. In Argentina the majority of the provinces (which correspond to our states) have the two-chambered system, but the others have single-chambered legislative bodies. In Germany before the war, fifteen of the twenty-five states had single-chambered legislatures and most of the individual states of the Latin-American federations have but

a single chamber. All the cantons of Switzerland which operate under the representative system have single-chambered bodies. In the Dominion of Canada, only two of the nine provinces have two-chambered legislatures; and some countries which have two-chambered legislatures have such a relationship between the powers of the two legislative bodies that they practically amount to a single chamber. Since the civil war there has been a decided tendency in all larger cities away from the two-chambered council, and the single-chambered legislative body for cities has pretty distinctly worked in a more satisfactory manner.³

The two-chambered legislative system is undoubtedly more cumbersome than the single-chambered system and makes it more difficult to fix responsibility, although, as has already been said, it frequently happens that the two chambers in Illinois do serve to improve the final result in legislation. When the two chambers represented different interests in the community, there was of course a strong argument for this type of legislative organization, and in some states today one chamber represents a rather distinct interest as against the representation of population in the other chamber. However, on the whole the distinction in the interests represented has largely disappeared in this country. It may, of course, be urged that our cumbersome legislative system now has too many checks, and that reducing the legislature to one chamber would not take off all checks but would merely abolish one, and at the same time make legislation more responsible. The check of the governor's veto power would still continue unless some closer relationship between the governor's power in legislation and that of the legislative body is worked out; and so, also, would probably continue a series of constitutional checks upon legislation, enforcible by judicial action. In connection with the whole question of a single-chambered legislature with respect to the state of Illinois, attention should be called to a discussion later in this pamphlet upon the problem of the representation of Cook County and Chicago in the General Assembly.⁴

The problem of the two-chambered legislature has been actively discussed in Great Britain and in other countries having the parliamentary system, under which the government is managed by a group of leaders responsible to a popularly elected legislative body, and resigning when they lose the support of the legislative body. It will be seen that the responsibility of such a governing group to two legislative bodies, each of which may be controlled at a particular time by different interests, would present difficulties, and the tendency in all countries under a parliamentary system has been pretty distinctly

³For a review of the movement for single-chambered legislatures in this country and elsewhere see James D. Barnett, *The Bicameral system in State Legislation*, *American Political Science Review* IX, 449. (August, 1915).

⁴Upon the whole subject of single-chambered legislatures and of legislative organization see Temperley, H. V., *Senates and Upper Chambers*; and Marriott, *Second Chambers*. See also Bulletin No. 1 of the Legislative Reference Department of the Kansas State Library, *Legislative Systems*, (Topeka, 1914); University of Oklahoma Bulletin, new series, No. 77, *Bicameral Legislatures* (1913); Nebraska Legislative Reference Bureau, Bulletin No. 3, *Legislative Procedure in the Forty-Eight States* (Lincoln, 1914); and Oregon Publicity Pamphlet for 1912.

toward making the cabinet as a governing group responsible to the larger and more popular of the two legislative bodies. This means that the other house has little influence upon measures of a political character.

Size of legislative bodies. Under the discussion of the historical development in Illinois attention has already been called to the variations in the size of the two houses of the Illinois General Assembly, and to the policy adopted in this state of limiting definitely by constitutional provision the size of the two houses. A table on page 534 sets out in detail the membership of the various state legislatures of this country. Some states prescribe the maximum number of members of each house, leaving to the legislature the determination of the exact number within this maximum.⁵ Others prescribe the maximum and minimum number of members of each house, leaving to the legislature the power to fix the membership within these limits.⁶ Louisiana fixes a maximum number of representatives and a maximum and a minimum number of senators.

In some constitutions a maximum, or a maximum and minimum, number is prescribed for one house, and a precise number is fixed for the other.⁷ Some states fix specifically, or by implication, the exact number of senators and representatives which shall compose the two houses.⁸ In a few states, the exact number of members in one house is fixed, leaving the legislature to determine the number in the other house on the basis of population,⁹ while in others the fixed number may be changed by legislative action.¹⁰ Minnesota prescribes that the number of senators and representatives shall not exceed one for a certain number of inhabitants.

Some states prescribe that a certain proportion shall exist between the sizes of the two houses.¹¹ The constitutions of Colorado and Nevada provide that the aggregate of members in both branches of the legislature shall not exceed a specified number.

Taking the states as a whole, the exact number of members of the two houses or of one of the two houses is left to legislative determination subject to constitutional restrictions. The size of the two houses varies a good deal from one state to another. The Illinois senate is one of the largest, being exceeded only by the state of Minnesota with 67 members. The size of the lower houses ranges from 35 in Arizona and Delaware to 404 in New Hampshire. The membership of the lower houses is especially large in the New England states because of the system of town representation, although in these states the senate is relatively small.

⁵ Alabama, Florida, Indiana, Kansas, Nebraska, Oklahoma and Oregon.

⁶ Mississippi, North Dakota, South Dakota and Virginia.

⁷ New Jersey, Rhode Island, Iowa, Georgia, Michigan and Maine.

⁸ New York, California, Delaware, Illinois, Massachusetts, Kentucky, New Mexico, North Carolina, South Carolina and Vermont.

⁹ Maryland, Texas and Missouri.

¹⁰ Arizona, Montana and West Virginia.

¹¹ Iowa, Nevada, Alabama, Wyoming, Wisconsin, Washington, Utah, Tennessee and Idaho.

A proposed constitutional amendment was submitted to the people of Ohio in 1913 for a material reduction in the size of both houses of the legislature. The proposal was to reduce the house of representatives from 123 members to 50 members, and the senate from 33 members to 22. This proposal, however, was defeated at the polls.

Under a constitutional rule which permits an increase in the number of members of each house, such increase is almost certain to take place, and the houses become too large for anything like effective legislative action. In all cases where no limitation exists, there will, of course, be political pressure by each community to retain as large an actual representation as it already has, leaving the readjustment of representation to be accomplished by increasing the representation of areas whose population has increased more rapidly, rather than by readjustment among all of the areas.

Terms and sessions of legislative bodies. Under the first state constitutions in this country, provision was made for annual sessions of legislative bodies. The lower house of the legislature had in the colonial period been the representative of popular interests against the crown. Frequent and regular sessions of the legislature were deemed essential in 1776 because they had been important issues in the conflicts which had just ended, and such issues naturally had an influence upon the constitutions framed immediately after the declaration of independence. Annual elections and annual sessions of the legislative bodies were then regarded as essential elements in a program of popular government, but distrust of legislative bodies soon developed and the tendency has been pretty steadily away both from annual sessions and from annual elections. The tendency has been to make the regular sessions of legislative bodies less frequent, and this tendency has, of course, also involved a less frequent election of members of the two houses. A very pronounced tendency has also been going on toward the reduction of the length of sessions of legislative bodies. The table given below indicates the present situation with respect to these matters in the several states.

Membership, Term of Legislature, Term of Governor, Frequency of Sessions and Limit of Sessions.

State.	Membership in		Term of Members		Term of Governor.	Sessions Held.	Limit of Session.
	Senate.	House.	Senate.	House.			
Alabama.....	35	106	4	4	4	Quadrennial..	50 days.
Alaska.....	8	16	4	2	4	Biennial.....	60 days.
Arizona.....	19	35	2	2	2	Biennial.....	60 days.
Arkansas.....	34	99	4	2	2	Biennial.....	60 days.
California.....	40	80	4	2	4	Biennial.....	None. ¹
Colorado.....	35	65	4	2	2	Biennial.....	90 days.
Connecticut.....	35	258	2	2	2	Biennial.....	5 months. ²
Delaware.....	17	35	4	2	4	Biennial.....	60 days.
Florida.....	32	73	4	2	4	Biennial.....	60 days.
Georgia.....	44	189	2	2	2	Annual.....	50 days.
Hawaii.....	15	30	4	2	4	Biennial.....	60 days.
Idaho.....	37	65	2	2	2	Biennial.....	60 days.
Illinois.....	51	153	4	2	4	Biennial.....	None.
Indiana.....	50	100	4	2	4	Biennial.....	61 days.
Iowa.....	50	108	4	2	2	Biennial.....	None.
Kansas.....	40	125	4	2	2	Biennial.....	50 days.
Kentucky.....	38	100	4	2	4	Biennial ³	60 days.
Louisiana.....	41	118	4	4	4	Biennial ³	60 days.
Maine.....	31	151	2	2	2	Biennial.....	None.
Maryland.....	27	102	4	2	4	Biennial ³	90 days.
Massachusetts.....	40	240	2	2	2	Annual.....	None.
Michigan.....	32	100	2	2	2	Biennial.....	None.
Minnesota.....	67	130	4	2	2	Biennial.....	90 days.
Mississippi.....	49	136	4	4	4	Biennial ³	None.
Missouri.....	34	142	4	2	4	Biennial.....	70 days.
Montana.....	41	95	4	2	4	Biennial.....	60 days.
Nebraska.....	33	100	2	2	2	Biennial.....	60 days.
Nevada.....	22	53	4	2	4	Biennial.....	60 days.
New Hampshire.....	24	404	2	2	2	Biennial.....	None.
New Jersey.....	21	60	3	1	3	Annual.....	None.
New Mexico.....	24	49	4	2	2	Biennial.....	60 days.
New York.....	51	150	2	1	2	Annual.....	None.
North Carolina.....	50	120	2	2	4	Biennial.....	60 days.
North Dakota.....	49	113	4	2	2	Biennial.....	60 days.
Ohio.....	33	123	2	2	2	Biennial.....	None.
Oklahoma.....	44	111	4	2	4	Biennial.....	60 days.
Oregon.....	30	60	4	2	4	Biennial.....	40 days.
Pennsylvania.....	50	207	4	2	4	Biennial.....	None.
Rhode Island.....	39	100	2	2	2	Annual.....	60 days.
South Carolina.....	44	124	4	2	2	Annual.....	40 days.
South Dakota.....	45	104	2	2	2	Biennial.....	60 days.
Tennessee.....	33	99	2	2	2	Biennial.....	75 days.
Texas.....	31	142	4	2	2	Biennial.....	60 days.
Utah.....	18	46	4	2	4	Biennial.....	60 days.
Vermont.....	30	247	2	2	2	Biennial ³	None.
Virginia.....	40	100	4	2	4	Biennial ³	60 days.
Washington.....	42	97	4	2	4	Biennial.....	60 days.
West Virginia.....	30	86	4	2	4	Biennial.....	45 days.
Wisconsin.....	33	100	4	2	2	Biennial.....	None.
Wyoming.....	27	57	4	2	4	Biennial.....	40 days.

¹ Split session—first part 30 days, recess 30 days, second part no limit.

² First Wednesday after first Monday in June.

³ Meets in even years. All others in odd years.

This table has been revised from a similar table appearing in Bulletin No. 9 prepared for the Massachusetts constitutional convention of 1917.

In explanation of this table it should be noted that there are some qualifications as to the length of sessions. A number of states do not absolutely limit the sessions to the number of days specified in the table. Some prescribe that compensation shall cease after a certain number of days (South Carolina, Virginia, Oregon, Kansas, North Carolina, Tennessee, Idaho, Rhode Island, Delaware, Arkansas, Arizona). Others prescribe a reduced compensation after a certain number of days (Texas, Missouri, Oklahoma). In West Virginia and Arkansas the

length of sessions specified may not be exceeded unless by a vote of two-thirds of the members elected to each house, and in Virginia by three-fifths of the members elected to each house. Nebraska curiously enough prescribes that the legislative session shall not be less than sixty days.

The tendency toward biennial sessions of the legislatures has been a steady one. Massachusetts in 1918 provided for biennial elections, but continued the plan of annual sessions. Iowa, in 1904, adopted the plan of biennial sessions, and in South Carolina a constitutional amendment for biennial sessions was approved by the people in 1904, but did not come into effect because in that state a constitutional amendment must be ratified by the legislature subsequent to its approval by the people. The only states now having annual sessions of their legislatures are Georgia, Massachusetts, New Jersey, New York, Rhode Island and South Carolina. Alabama has a quadrennial session. Mississippi tried for some years a quadrennial long session with an intermediate short session, but it was usually necessary to extend the length of the short session, and the state returned to biennial regular sessions.

With respect to the limitations upon the length of legislative sessions, attention should be called to the fact that a number of states not merely limit the length of regular sessions, but also the length of special sessions.

The development from annual to biennial sessions of the legislatures cannot be said to have increased materially the frequency of special sessions. In Illinois special sessions have been frequently held, especially in the period between 1907 and 1916, but special sessions have not played any large part in Illinois under the plan of biennial sessions which has existed since 1818.

It will be noted from the table that in a majority of the states, senators are elected for four years and representatives for two years, and in many of these states one-half of the senate is elected each two years. However, Alabama, Louisiana and Mississippi have four-year terms for the members of both houses, and a number of states have a two-year term for members of both houses.

Some attention should also be called to the conditions under which special sessions may be assembled in the state of Illinois. The constitution provides that the governor "may on extraordinary occasions, convene the General Assembly, by proclamation, stating therein the purpose for which they are convened, and the General Assembly shall enter upon no business except that for which they were called together." This provision makes it necessary that the governor call a new special session if he thinks of other things needing consideration after a special session has once assembled. Such a difficulty is avoided by the constitutions of some other states.

Qualifications, privileges and disabilities of members of the General Assembly. Little need be said about these matters. Sec-

tions 3, 4 and 5 of Article IV of the constitution relating to the qualifications and oath of members of the General Assembly are not dissimilar from the provisions in other state constitutions. With respect to the disqualifications because of the holding of other offices, a change has been suggested because of the feeling that in actual operation the executive department and the legislative bodies should be brought more closely together.

Privilege from arrest and from being questioned with respect to matters of debate (provided for in Section 14 of Article IV) are matters which are ordinarily covered by state constitutions, and which are pretty clearly appropriate with respect to legislative bodies. Substantially the only disqualifications imposed upon members of the General Assembly are those specified in Sections 3, 15 and 25 of Article IV of the constitution. With respect to Sections 3 and 15 a remark has been made above regarding the possibility of relaxing the limitations so as to permit a closer co-ordination between the executive and the legislative departments. With respect to interest in state contracts, dealt with by Section 25 of Article IV, attention should be called to the fact that there are similar provisions relating to this matter in other parts of the constitution, and it would be wise to bring all such provisions together and to make them applicable to all governmental officers.

Compensation of members. Section 21 of Article IV of the constitution provides for the pay of members, and a part of this section was intended to meet definite abuses which existed before 1870. For this reason the provision was placed in the constitution giving to each member the sum of fifty dollars "which shall be in full for postage, stationery, newspaper and all other incidental expenses and perquisites". Until the decision in the case of *Fergus v. Russel*,¹² this provision was not observed with any degree of strictness. Since 1915, however, there has been no use of state funds to grant extra perquisites to members of the General Assembly. With respect to the compensation of members, two matters present themselves. There is some argument in favor of giving the speaker of the house of representatives a greater compensation than that received by other members of the General Assembly. This argument has weight in view of the fact that a speaker must normally devote a much greater proportion of his time to legislative duties than do other members of the house. A precedent for such a practice exists in Chicago, by the plan under which the chairman of the finance committee of the City Council receives a higher salary than other aldermen, because of the fact that his position involves a greater amount of work.

Another matter which presents itself with respect to compensation is that as to the plan of permitting the payment of mileage for each week during the legislative session. The practice has developed in Illinois, and in practically all other legislative bodies of the country, of having a session for several days during

¹² 270 Ill. 626 (1915).

the middle of the week, the members returning to their homes for the week-end. This plan is recognized by legislation in Ohio, which prescribes a fixed salary for each member and then in addition provides for the payment of weekly mileage. The same plan was also recognized by the proposed constitution which was rejected in New York in 1915. Under the Illinois constitution, the mileage to be paid to members is definitely prescribed, but the amount of compensation is fixed by law, subject to the condition that "no change shall be made in the compensation of members of the General Assembly during the term for which they may have been elected."

IV. CUMULATIVE VOTING AND PROPORTIONAL REPRESENTATION.

Cumulative voting. Just before 1870 the problem of proportional representation was attracting a good deal of attention in England and in this country. The plan of cumulative voting presented to and adopted by the constitutional convention of 1869-70 was urged for two reasons: first, that the plan of majority voting was unjust and unrepresentative, and second, that in the state of Illinois representation was sectional, one large part of the state being represented entirely by republicans and another large part of the state entirely by democrats. The plan of cumulative voting was proposed to the voters of the state in 1870 as an alternative for the majority system, and was adopted by popular vote. It is probable that the most decisive argument for the plan of cumulative voting was that regarding the sectional representation in the Illinois house of representatives rather than the theoretical argument in favor of a more equitable system of representation. Under the provision for cumulative voting it is provided that "in all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected." Under this plan it is of course true that any party having more than one-fourth of the votes in a senatorial district may elect one of the three candidates to the house of representatives, if all of the votes of that party are concentrated upon one such candidate. A party having less than three-fourths of the votes in a senatorial district cannot elect all three of the representatives from the district if any other party having at least one-fourth of the votes has concentrated upon a single candidate; and if a party having a distinct majority, but less than three-fourths of the votes in a senatorial district, scatters its votes among three candidates, a minority party may be able to elect two candidates by a concentration of its votes upon the two. The cumulative system therefore makes it necessary that each party gauge its strength in advance of the election, and concentrate its votes in the election upon the number of candidates it thinks it possible to elect. A minority party able actually to elect but one candidate may lose that one if it places two or three candidates in the field. The majority party able to elect two may lose one of the two if it places three in the field, and there have been some instances of a party failing to obtain under

the cumulative system a representation in proportion to its strength, because of its placing too many candidates in the field. On the other hand a party may fail of obtaining representation of its strength under the cumulative system because of its failure to have as many candidates as it could actually elect. That is, a party which has been a minority party in a district may place but one candidate in the field for representative, and may as the result of the particular election become the majority party with a possibility of electing two members of the house, if it had nominated two candidates.

From what has been said above it will be seen that the cumulative system does not weaken party discipline as it was supposed in 1870 that it would do, but that it has had precisely the opposite effect of making party discipline necessary if each party is to make an effective use of its voting strength.

Before the introduction of primary elections in the state the party organization in each senatorial district, therefore, of necessity determined the number of candidates whom that party should have in the election for representatives. After some little difficulty, the general assembly of Illinois was finally able to enact a primary election law which was sustained by the Supreme Court of Illinois. Under the primary election law of 1910 the determination as to the number of party candidates in each senatorial district is left to a party senatorial committee, and, in compliance with conditions laid down by the Supreme Court, the primary election system is also so devised that in all primaries each qualified primary elector may distribute his votes as he sees fit, under the cumulative system, among party candidates in the primary. The primary law of 1910 in conferring power upon the party committee to determine the number of candidates of that party to be voted upon in the election merely embodies into law the plan which had previously existed, and which practically must exist if the cumulative system is to have any effectiveness.

If each party were to nominate three candidates under the cumulative system, and each party voter then cast a single vote for each party candidate so nominated, the cumulative system would break down and the result would be the election of all three candidates by the party having an actual majority or plurality of votes in that senatorial district. The operation of the cumulative system, therefore, makes it necessary that the party machinery determine in advance the number of candidates to be nominated and also that the number of such candidates be limited by the party organization.

The decisions of the Supreme Court upon primary legislation in this state definitely made necessary the application of the cumulative system to primary elections as well as to the regular election of members of the General Assembly.¹ The chief arguments against making the cumulative system applicable to party primaries were the following:

(1) It was urged that primary election is in no way provided for in the constitution, and that provisions of the constitution regarding

¹ *People v. Board of Election Commissioners*, 221 Ill. 9 (1906); *Rouse v. Thompson*, 228 Ill. 522 (1906); *People ex rel Phillips v. Strassheim*, 240 Ill. 279 (1909); *People ex rel. Epley v. Deneen*, 247 Ill. 289 (1910).

elections should apply only to such elections as are prescribed by the constitution itself. This argument was rejected by the Supreme Court with respect to primary elections, although substantially the same argument has been adopted by the Supreme Court with respect to woman's suffrage.

(2) It was urged that the plan of cumulative voting was adopted by the constitution of 1870 primarily for the purpose of obtaining representation of minority parties in the two parts of the state, so as to do away so far as possible with a purely sectional representation. This argument appears to be historically a sound one, and would naturally lead to the conclusion that the cumulative system was not directed primarily at the results to be obtained through party nominations.

Cumulative voting as applied to primary elections has made it easier for candidates to present themselves for party nominations, but has probably not made it easier for an independent candidate to obtain such a nomination. The party organization has pretty clearly not been weakened by the introduction of the cumulative system into the primary elections, and to some extent it may actually have been strengthened.

With respect to the operation of the cumulative system, it may perhaps be said that the system has in the main obtained a representation for the two principal parties in the state in very close proportion to the actual votes cast by these parties, and also that the system obtained for the Progressive party in 1912 a strength in the house of representatives proportionate to the vote cast by that party. However, the cumulative system has not obtained much of actual representation for weak minority parties, or for minority parties whose strength may be relatively great but whose vote may be scattered somewhat evenly throughout all of the senatorial districts in the state. The Progressive party in 1912 cast a large vote, but its strength was much greater in some senatorial districts than in others. The Progressive party was, therefore, able in 1912 to elect a number of representatives proportional to the popular vote which is cast for representatives. In 1914, however, the actual vote cast for representatives by the Progressive party was much less than in 1912, and with this lesser vote the Progressive party obtained a strength in the house of representatives disproportionately low as compared with the popular vote. To be specific, the Progressive party cast for representatives in 1912 votes which under the cumulative system totaled 584,955. As a result of this vote it elected 26 members of the house, and it was entitled to this number. In 1914 the Progressive party polled a vote of 343,390, entitling it upon a proportional basis to 18 members of the General Assembly, and obtaining but two seats in the house of representatives: The same situation has presented itself with respect to other minority parties which have not obtained such a strength as to become substantially the chief minority party in particular districts. The cumulative system in its operation has been in no way a scheme of proportional representation except as between the two principal parties.

As has already been suggested, it is essential that the party organization limit the number of its candidates, if a party is not to lose as a result of the operation of cumulative voting. It is probably true that

this party control as to the number of candidates was actually a great before 1910 as since enactment of the primary election law. However, the primary election law did make the party control of the number of candidates more definite and more public. Under the primary system it is probably also true that the party organization exercises equally as much control over the nomination of the candidates of the particular party, although under the primary system it is easier for any individual to become a candidate for a party nomination.²

The cumulative system almost necessarily involves the disappearance of contests between the parties in the election. If each party gauges its strength accurately, there will be only as many candidates of the chief parties in the election as there are places to be filled. This means that ordinarily the only political contest is that involved in obtaining the nomination, and there has usually not been active popular participation in the primaries. At the election the voter has no choice unless there is an extremely strong movement (outside of the two larger parties), and under the cumulative system two of the three candidates nominated by these parties are practically sure of election even though the sentiment against the three may be strong, and the candidate of the minority party is ordinarily in a position where it is hardly possible to defeat him. Under a cumulative system which operates so as to produce minority representation the party organizations must control to a very great extent, and the voter has little power of choice once party nominations are made. This is true whether the nominations are by primary or by convention. Although the system has reduced sectional representation and brought about an approximately proportional representation of the two leading parties, it has of necessity reduced the influence of the voter in the election.

Perhaps the main purpose in the adoption of cumulative voting in 1870 was to do away with the distinctly sectional representation in the Illinois General Assembly, and this purpose has been accomplished. To some extent of course a sectionalism of representation would again be introduced by abandoning the cumulative system, although this is not nearly so true as it would have been in 1870.

Majority elections. If cumulative voting is abandoned, two alternatives present themselves: either the return to majority elections for all members of the house of representatives as before 1870, or the adoption of a proportional system for the election of the house of representatives and perhaps also for the election of the state senate. Under the majority system of electing members of the two houses it is oftentimes true that the party majorities in the two houses represent an actual minority of the total vote cast for representatives, and it is more frequently true that the total vote for representatives is

² For a full discussion of the cumulative system and its operation see Moore, B. F., *The History of Cumulative Voting and Minority Representation in Illinois, 1870-1919*, second edition. University of Illinois Studies in the Social Sciences.

much less than that for candidates for offices which attract greater popular attention.

If the majority voting plan is to be established as before 1870 the question of apportionment for the house and senate becomes distinctly more important than under the present system of cumulative voting. Under the present system there is but one series of legislative districts. Each of these districts is relatively large, and the plan of electing three members of the house of representatives under the cumulative system from each such district decreases the gains to either party which may be obtained by gerrymandering, for either one of the principal parties knows that it cannot arrange districts in such a manner as to obtain all three representatives. Comment has been made in a previous part of this discussion upon the desirability of so arranging districts for the election of members of the two houses that there may be a development of some unity of feeling within a single series of districts. It is highly desirable, if possible, to have but one series of districts for the election of members of the two houses. Of course it is possible to have but one series of districts and at the same time to do away with cumulative voting. It may be possible to employ each of the senatorial districts for the election of three members of the house upon a purely majority plan; although such a plan, equally as much as the plan of splitting up the state into 153 house districts, will involve a greater possibility of employing apportionment for purely partisan purposes, inasmuch as the majority party will then elect all of the three candidates.

In connection with the problem of cumulative voting some attention should also be given to the problem of Cook County representation, especially with respect to reducing such representation. A full discussion of this subject will be found later in this pamphlet, but attention should here be called to the fact that the proposition has been made for the reduction of Cook County representation in one house of the General Assembly, leaving representation in proportion to its population in the other house. If this plan were carried out, it would be difficult to employ, at least within Cook County, the same districts for members of the senate and members of the house, and any plan of cumulative or proportional representation within Cook County will also be rendered more difficult, although the chief difficulty will be that of setting up two sets of districts for legislative purposes. It has already been suggested that cumulative voting does not obtain what is really proportional representation. In this state cumulative voting has given to the two larger parties representation in the house relative in proportion to their strength, and representation proportional to its strength was given to the Progressive party in 1912. However, small parties have as a rule suffered from lack of representation and the cumulative system has been of little or no aid to them.

Proportional representation. Because of this fact a more proportional system of representation is likely to be suggested for

consideration by the constitutional convention. The ideal of proportional representation is that representation shall, as nearly as possible, be in mathematical proportion to the votes cast by each separate group or party, whatever may be the number of parties. If a district elects only three representatives, this limitation of number means that not more than three groups of voters may be represented, and (under almost any system) that the two stronger groups will elect the three. Proportional representation therefore requires larger districts, each electing a greater number of persons. Suppose for example, a district having 70,000 voters and electing seven members. A mathematical distribution of the seven members might be as follows:

Republicans	30,000 votes	3 members
Democrats	20,000 votes	2 members
Progressives	10,000 votes	1 member
Socialists	10,000 votes	1 member

Even with large districts and with a scheme that will count every vote effectively, exact mathematical results will, of course, not be obtained, but the result will be more nearly accurate than under cumulative voting.

The several plans of proportional representation involve a good deal of technicality, though the actual operation of the several systems is not complex. The two plans most discussed are: (1) Single transferable vote; (2) List system.

Under the single transferable vote system, the voter votes for but one candidate, no matter how many candidates are to be elected, but is permitted to express also his second, third and fourth choices. If the candidate for whom he votes has more than enough votes to be elected, the surplus votes are transferred, in the order of the choice expressed, to some other candidate who has not enough votes; and in this manner no person's vote is lost.

The list system, long in use in Belgium, and introduced in France in 1919, involves the presentation of a list of candidates by each party, the voter then voting for the list and also expressing his preference among the candidates upon the list. Each party obtains a number of seats in proportion to the votes cast for its list. The party arranges the order of names on the list, and the seats apportioned to that party go to the candidates at the head of the list, unless the voters have expressed a different preference. Under both the single transferable vote system and the list system, the designation of candidates devolves primarily upon the party organization, but the party's control is greater under the list system, because it not only designates the candidates but usually the order in which they shall be declared elected.

The proportional system has been applied in a number of countries throughout the world, and has been most vigorously employed in those countries where there are not merely two strong parties, but groups of parties each relatively strong. Where there are a number of parties in a given country the scheme of proportional representation gives of course more adequate representation to each of these groups. In the United States (both in the states and in the federal system) the gov-

ernment has practically always been operated under what may be termed the two-party system. That is, there have been two great parties, one of the parties usually controlling the government and sharing some responsibility for the operation of the government. Of course the system under which a governor is elected for a four-year period and members of the house are elected each two years (with one-half of the members of the senate elected each two years) may lead to a condition under which the governorship is controlled by one party and one or both houses by the opposite party. Such a situation has also presented itself quite frequently in connection with the operation of the national government, so that under such a situation it is impossible for one party to be completely responsible for the conduct of government, because that party is not in control of both the legislative and executive organs of government. For this reason it has been suggested that some scheme of parliamentary government should be adopted under which the executive should always be in political harmony with the majority in one or both houses of the legislature. The problem of parliamentary government will be discussed later in this pamphlet, but the point here presenting itself is that as to the effect of cumulative voting or proportional representation upon the type of government which we now have. A scheme of proportional representation, and to some extent the scheme of cumulative voting, may be sometimes operated to give in a legislative body a majority to one party or to a combination of parties, other than the party to which the governor may belong. The government both in the federal system in this country and in the states operates best of course when the presidency and both houses of congress, or the governorship and both houses of the legislature are controlled by the same party. This is true even though it be recognized that national political issues play a relatively small share in the actual voting upon bills presented to state legislatures. Under our present system of government any system of cumulative voting or proportional representation which operates to prevent political harmony between the executive and the legislative branches of government is to that extent disadvantageous, although it can hardly be said that the cumulative system has operated to any great extent in this manner in Illinois since 1870.

V. APPORTIONMENT.

Under earlier systems of representation in this country, the notion was largely that of representation of areas rather than of population, and to quite a large extent such a notion survives in a number of the states of the country. In New England, for example, under the town system the basis is largely one of town representation, and for this reason, with the growth of large communities, representation has become highly unequal. In some other states there is a representation in one house on the basis of territorial subdivisions. For example, each county in New Jersey is represented by one senator, although two of the counties have grown to have a combined population equal to two-fifths of that of the whole state. An inequality of representation necessarily results from the choosing of established governmental areas as a basis for representation, unless this plan be combined with that of frequent reapportionments and of the grouping together of small governmental areas in case any one of them comes to have a smaller population than that determined upon as the basis for representation.

The more common plan in this country today, however, is that of providing for periodical reapportionment basing such reapportionments upon population. Pennsylvania in 1776 first established the plan of reapportionments at certain fixed intervals, and such a plan was adopted in Illinois in 1848. The constitution of 1870 prescribes a reapportionment each ten years after the decennial census, and this provision has been held to limit the General Assembly to a reapportionment once in each ten-year period following a federal census, although the constitution contains only by implication a limitation of this character.¹

A large number of the states of this country prescribe apportionments at fixed times and also lay down a basis for apportionment which attempts to obtain a rather definite mathematical relationship between population and representation. Illinois may be said to belong to this group of states, although the Illinois rule regarding apportionment is subject to one exception in that "counties containing not less than the ratio and three-fourths may be divided into separate districts, and shall be entitled to two senators, and to one additional senator for each number of inhabitants equal to the ratio contained by such counties in excess of twice the number of said ratio." Under this rule a county with more than two representatives is likely to lose one senatorial district because of the fact that a large fraction in such a county cannot be assigned another senatorial district.

¹ *People v. Hutchinson*, 172 Ill. 486 (1898).

Reference has already been made in several places to the fact that Illinois now has but one set of legislative districts. A similar plan is employed in Minnesota and North Dakota, but without the system of cumulative voting.

There has been a very definite tendency in this country to impose constitutional limitations upon the methods of legislative apportionments in order to prevent gerrymandering. Gerrymandering existed before the Massachusetts apportionment of 1812, although it derived its name from that apportionment. Beginning with Pennsylvania in 1790, constitutional provisions came to be made requiring that legislative districts should be composed of contiguous territory and containing other requirements of a similar type. In Illinois a very definite rule is laid down that "senatorial districts shall be formed of contiguous and compact territory, bounded by county lines, and contain as nearly as practicable an equal number of inhabitants but no district shall contain less than four-fifths of the senatorial ratio." In some states the courts have been very strict in construing constitutional limitations of this character and have declared apportionments invalid which in the opinion of the court did not sufficiently comply with the constitutional commands. In Illinois, however, the Supreme Court has been liberal and has declined to inquire into apportionments if the constitutional requirements have been technically met.²

There is distinct advantage in the use of permanent governmental areas as a basis for legislative apportionment, and the Illinois plan confines senatorial districts to county lines, unless a particular county is entitled to more than one senator in which case the county is divided. In cases where a particular county is entitled to more than one senator (as in the case of Cook County) there has on the whole been little effort to construct senatorial districts upon the basis of existing local areas, within the county although ward lines within the city of Chicago have been used to some extent. It is of distinct value to build a representative system upon permanent local governmental areas, although such a plan would with the growth of population require the adjustment of representation to such areas upon other than a purely mathematical basis. That is, a rule would have to be adopted which not merely takes the mathematical basis into consideration but which also considers the limits of local territorial areas.

In the discussion of apportionments in Illinois, which appears at the beginning of this pamphlet, attention is called to the fact that use was made in 1836 and in 1841 of so-called floating members. In 1836 the plan was adopted of creating a representative district out of two counties, such representative district electing one representative at one election and two representatives at the succeeding election. In 1841 an application of the use of floating members was made by providing that Schuyler County should elect

² For a valuable discussion (now somewhat out of date) of legislative apportionment, see Reinsch, P. S. *American Legislatures and Legislative Methods*. New York, 1907.

one representative, Brown County, one representative, and the two counties together, one additional representative. A plan for floating representation was embodied in the constitution of 1870 by a provision that "when a county or district shall have a fraction of population above what shall entitle it to one representative, or more, according to the provisions of the foregoing section, amounting to one-fifth of the ratio, it shall be entitled to one additional representative in the fifth term of each decennial period; when such fraction is two-fifths of the ratio, it shall be entitled to an additional representative in the fourth and fifth terms of said period; when the fraction is three-fifths of the ratio, it shall be entitled to an additional representative in the first, second and third terms, respectively; when a fraction is four-fifths of the ratio, it shall be entitled to an additional representative in the first, second, third and fourth terms, respectively." This plan has never come into operation because by the adoption of the cumulative voting plan in 1870 the people limited apportionment to fifty-one senatorial districts.

In 1870 it was urged that each county should be represented in the house of representatives, but such a plan is difficult to work out, where there are numerous counties some of which have small populations. In favor of making each county a unit of representation, it is urged that where districts are composed of more than one county, a small county is not apt to have a representative who lives within its borders, and political trading among the counties is likely to occur. From the standpoint of obtaining the popular approval of a constitution, the convention of 1869-70 acted wisely in not making a legislative apportionment for submission as a part of the constitution.

VI. COOK COUNTY REPRESENTATION.

Constitution of 1818. Under the first state constitution, senators and representatives were to be apportioned among the several counties or districts established by law, according to the number of white inhabitants. But there was no provision for reapportionment at definite intervals. A minimum and maximum number of representatives was named, until the state had a population of 100,000; and the number of senators was to be not less than a third nor more than half the number of representatives.

Cook county (as part of a district containing four other counties) was first represented in the eighth General Assembly, elected in 1832, the district having one senator, in a total of 26; but there were no Cook County members in the house of representatives until the election of the tenth General Assembly in 1836, which had one senator and three representatives from Cook County, in a total of 40 senators and 91 representatives. This representation continued until the adoption of the second state constitution. On the basis of population in 1840, (10,201 in Cook County, and 476,183 in the state), this gave Cook County its full proportion of members.

Constitution of 1848. The second state constitution provided for a senate of 25 and a house of representatives of 75 members; and authorized increases in the house after the state had a population of 1,000,000. Senators and representatives were to be apportioned among the counties or districts established by law according to the number of white inhabitants, with one senator to each senatorial district and not more than three representatives to any representative district.

At the election in 1848, Cook County had one senator and two representatives, corresponding approximately to the population in 1850 (43,385 out of 851,470). Under a re-apportionment effective at the election of 1854, Cook County had four representatives, two from each of two districts. A new apportionment, effective at the election of 1862, gave Cook County two senators (from two districts), and seven representatives (from three districts) out of a total of eighty-four members in the house. This corresponded to the population in 1860—144,954 in Cook County and 1,711,951 in the state.

Constitution of 1870. At the election of 1870, Cook County elected four senators (two from each of two districts), in a total of fifty, and twenty-two representatives, in a house of one hundred and seventy-seven. The representatives were elected by three districts, ten from one district, and six from each of the others. On the basis of population in 1870 (349,966 in Cook County and 2,539,891 in the state), Cook County would have had seven senators and twenty-one representatives.

With the adoption of the provisions for cumulative voting and minority representation, the state was redistricted into fifty-one senatorial districts, each to elect one senator and three representatives. These districts were now required to be of contiguous and compact territory, and to have as nearly as practicable an equal number of inhabitants. Under this apportionment, Cook County had seven senators and twenty-one representatives, which number corresponded to its population in 1870.

At the reapportionment in 1881, Cook County representation was increased to ten senators and thirty representatives. In 1894, this was further increased to fifteen senators and forty-five representatives. In 1901, the latest apportionment gave Cook County nineteen senators and fifty-seven representatives. Each of these apportionments gave Cook County representation in proportion to its population at the immediately preceding census, as required by the constitution.

With the failure to redistrict the state after the census of 1910, the representation of Cook County is now less than it would have on a population basis. On the basis of the 1910 census, Cook County would have twenty-one senators and sixty-three representatives; and it is probable that the 1920 census will show a larger proportion of the total population of the state in Cook County.

Cook County Representation in the General Assembly.

Year	Senate		House of Rep.		Population		
	Cook Co.	Total	Cook Co.	Total	Cook Co.	Total State	Year
1832.....	1	26		55		157,445	1830
1836.....	1	40	3	91			
1848.....	1	25	2	75	10,201	476,183	1840
1854.....	1	25	4	75	43,385	851,470	1850
1862.....	2	25	7	85	144,954	1,711,951	1860
1870.....	4	50	22	177	349,966	2,539,891	1870
1872.....	7	51	21	153			
1882.....	10	51	30	153	607,719	3,077,871	1880
1894.....	15	51	45	153	1,191,922	3,826,351	1890
1902.....	19	51	57	153	1,838,735	4,821,550	1900
					2,405,233	5,638,591	1910

Proposals for limitation. As a result of the fixed number of members of the General Assembly, the reapportionments made since 1870 have necessarily involved a reduction in the number of members in each house from other parts of the state, corresponding with the increase in Cook County membership. This condition has probably added to the sentiment outside of Cook County in favor of limiting the representation of Cook County; and this sentiment has apparently increased as the population of Cook County has approached and tends to surpass that of the rest of the state. It has been urged that no single county should be allowed to elect a majority of the members of the two houses of the General Assembly.

Attempts were made to limit the representation of Cook County in connection with the constitutional amendment proposed in 1903 authorizing special legislation for Chicago. The limitation proposed was finally defeated in the house by a vote of 62 to 75, all of the 57 Cook County members and 18 others voting against it.

At the same time the opposition to any further increase in the representation of Cook County has probably been the main factor in the failure to redistrict the state since 1901. The result is that not only has Cook County as a whole fewer members than it would have in proportion to its population, but also that there are now large variations in the relative population and voters in different districts, both within Cook County and in other parts of the state. At the election in November, 1916, in the 17th district (in Cook County) only about 6,000 electors voted for representatives, while in the 25th district (also in Cook County) more than 50,000 electors voted. In the 51st district, about 18,000 electors voted, while in the 45th district more than 30,000 electors voted.

At the meeting of the Illinois State Bar Association held at Danville in 1917, Col. Nathan William MacChesney of Chicago said of the proposed limitation of Cook County representation: "It is entirely probable that in return for Home Rule in Chicago the people down state will demand a restriction upon the representation of Cook County. I believe this is a fair demand and hope to see under our new constitution the bicameral system of our legislature preserved; with representation in the House upon a population basis; and with representation in the Senate upon a geographical basis, with a greatly reduced number of senators."¹

Limitations on representation in other states. The earliest system of representation, that of the English House of Commons, was based on the principle of representing local communities, without reference to population. Each shire, or county, and each borough was entitled to send two members to Parliament. This remained the main basis for representation in Parliament until the Reform Act of 1832; and it has only been since 1885 that population has been considered an important factor in adjusting representation in the United Kingdom.

¹ Proceedings of the Illinois State Bar Association, 1917, p. 306.

In the American colonial legislatures, representation was also at first based primarily on local districts; and only gradually has population come to be accepted as the main consideration. The provisions of the United States constitution for the apportionment of members of the House of Representatives on the basis of population readjusted at definite intervals, was the first important application of this principle. At the same time, the composition of the United States Senate was and still is based on the older principle of equal representation of the states, without respect to population.

Representation based largely on population has come to be generally accepted as an underlying principle in the organization of American state legislatures. But it is still subject to many exceptions in a large number of states. On the one hand, a distinct preference is given in many states to small local districts, such as towns and counties. On the other hand, in a number of states there are limitations placed on the representation of large cities.

The most general variations from the rule of population are to be found in some of the New England states. Here representation in the larger house of the state legislature is based in the main on towns and cities. In Connecticut, Rhode Island and Vermont each town has at least one representative; and in New Hampshire each town with a population of 600 has a representative in each legislative session. In Connecticut no town has more than two representatives, and in Rhode Island, no town or city has more than one-fourth of the total number of members in the larger house.

These provisions limit closely the representation of such cities as Providence, R. I., and New Haven and Hartford, Connecticut, which are included within the towns. The four principal cities in Connecticut, which contain one-third of the population of the state, have only one in thirty-two of the members of the house of representatives. In Rhode Island, it was stated in 1907 that a majority of the house of representatives was elected by towns with 20 per cent of the population; and a majority of the senators, by little more than 8 per cent of the population. In the case of Providence, there is a further and stricter limitation of representation in the state senate, as each town or city in Rhode Island has only one senator. Thus Providence, with half of the population of the state, has only one-fourth of the members of the house of representatives, and only 1 of 39 senators.

In most of the other states, the county is taken as the usual basis of representation. In about one-third of the states, each county is entitled to at least one member in the house of representatives.²

But none of these states have such great variations in county population, or so many counties with a small population far below the average, as has Illinois.

In Florida and Georgia, no county is allowed more than three representatives. This limits the representation of the counties containing the larger cities. Thus Duval County, Florida, with a tenth of the population of the state in 1910, has only 2 out of 73 members of the

²Alabama, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and Wyoming.

house of representatives; and Fulton County, Georgia, with 7 per cent of the total population, has only 3 out of 184 members in the house. No county in Oklahoma may have more than 7 representatives.

In Maryland, Montana, New Jersey and South Carolina, each county has only one member of the state senate. Thus Hudson and Essex Counties, N. J. each with a fifth of the population of the state have each but one of 21 senators, as have six other counties with a population of over 100,000 each. These counties with 8 members have four-fifths of the total population; while the other 13 counties with one-fifth of the population (one of which, Cape May, has only 20,000 population) have 13 members of the state senate.

In Delaware, Newcastle County, with three-fifths of the total population in 1910, has only 15 out of 35 members of the house of representatives, and but 7 out of 17 members of the senate. The city of Wilmington, in Newcastle County, with two-fifths of the population of the state has but 5 members of the house and 2 members of the senate.

In Missouri the constitution provides that representation in the senate shall be in proportion to population. In the house: "The ratio of representation shall be ascertained at each apportioning session of the general assembly, by dividing the whole number of inhabitants of the state, as ascertained by the last decennial census of the United States, by the number two hundred. Each county having one ratio or less, shall be entitled to one representative; each county having two and a half times said ratio shall be entitled to two representatives; each county having four times said ratio shall be entitled to three representatives; each county having six times said ratio shall be entitled to four representatives; and so on above that number, giving one additional member for every two and a half additional ratios."

Situations somewhat more analogous to those in Illinois are to be found in Baltimore, Philadelphia and New York City; and constitutional provisions with special reference to the representation of these cities may be noted more in detail.

In Maryland, representation in the house is based on counties, according to a schedule which approximates to population up to a maximum of 6 members for counties of over 55,000 population. Baltimore City is divided into 4 districts of equal population, each of which has 6 members, the same as the maximum for counties. This gives Baltimore, with two-fifths of the population of the state, a total representation of 24 out of 102 members in the house of representatives. Each county in Maryland has one senator; and each of the four representative districts in Baltimore City has one senator, giving Baltimore 4 of the 27 members of the state senate.

In Pennsylvania, representation in the larger house is based on population. But in the senate, no city or county is entitled to separate representation exceeding one-sixth of the total number of senators. This provision restricts the membership in the senate of the city and county of Philadelphia, which in 1910 had about one-fifth of the total population of the state. It may also before long restrict the senate representation of Allegheny County, including the city of Pittsburg, which in 1910 had one-seventh of the total population of the state.

In New York state, representation in the assembly, the larger house of the state legislature, is based on population, except that each county has at least one member. For the senate, provisions were adopted in the constitution of 1894 which may limit the representation of New York City to a slight extent. No county may have more than one-third of all the senators; and no two counties (or the territory thereof as organized in 1895) which are adjoining or are separated only by public waters, may have more than one-half of all the senators.

The limitation of representation of any one county to one-third of the senators does not as yet operate to restrict the representation of any county. But it would operate if all the counties in New York City were combined into one; and is thus an obstacle to the consolidation of these counties. The limitation on the representation of two adjoining counties limits the membership of two of the three counties of New York, Bronx³ and Kings in the senate to not more than half of the senate. But as New York City now includes two other counties (Queens and Richmond), it is possible for New York City to elect more than half of the senators.

These provisions of the New York constitution were retained in the proposed constitution of 1915; and no steps were taken to restrict further the representation of New York City.

Equal representation of geographical districts with no regard to differences in population, as in some of the New England and several other states, is clearly out of harmony with present day ideas of democracy and popular government. But there are distinct advantages in basing representation on organized local districts having a distinct social and political life rather than on artificial districts based solely on population. The latter make easy gerrymanders in the interest of particular parties or individuals; while rapid changes in population (especially in large cities) soon cause wide departures from equality of population, on which such districts are supposed to be based.

If any limitation on Cook County representation from the population basis is considered advisable, it will presumably be based on the view that no one county should be able to control the state legislature, and there have been occasions, though they are not frequent, where members of the general assembly from Cook County have been aligned definitely against members from other parts of the state. At the same time, it may be said that if one county has a majority of the population of the state, the remainder of the state with a minority of the population should not be given control over the majority. It has been suggested that these views may be brought into some degree of harmony by basing representation in one house of the general assembly on population, and by applying a limitation to the representation of Cook County in the other house.

Reference has been made to the fact that Cook County representation is now the same as in 1901 and to the further fact that a continued failure to reapportion will bring a progressive under-representation of Cook County upon the basis of the present constitutional rule.

³ Bronx County was organized in 1915 out of part of New York County, and is therefore included under the provision of the constitution of 1894.

Mere inaction by the general assembly is therefore producing a proportional under-representation of Cook County.

It should also be clearly borne in mind that the problem of Cook County representation is likely to be considered in very close relationship with that of municipal home rule for Chicago and the other cities of the state. If Cook County and Chicago have a limited representation but continue under the necessity of getting authority from the general assembly to deal with local problems they are helpless, for legislative inaction denies them the things they need. If Chicago is governed largely from Springfield, reducing the representation of Chicago at Springfield is reducing the power of the city to govern itself.

Attention should be called again to the fact that the present constitutional rule with respect to representation in the general assembly is not precisely mathematical, but penalizes to some extent a county having more than two representatives. Had an apportionment been made in 1910 Cook County would, under the existing constitutional rule, have obtained one senatorial district less than that to which it would have been mathematically entitled.

The problem of representation for Chicago and Cook county bears a very direct relationship to the problems of cumulative voting, and of a single-chambered legislature. If some basis of representation is to be worked out by which Chicago and Cook County are to have in one house a representation in proportion to their population and in the other house a representation limited to less than one-half of the whole irrespective of population, this will create a distinction not now existing between the two houses and will give a basis for a relationship between the two somewhat similar to that between the house of representatives and the senate of the United States.

With respect to cumulative voting, if a different basis of representation is to be established for Chicago and Cook County, in the two houses of the general assembly, it will be difficult to retain the same districts for the election of members of both houses. Of course it is possible to create a separate series of districts for the election of members of the house of representatives, continuing to elect three members for each such district upon a cumulative basis, but under such a plan a good deal of the advantage of the present system will be lost because of the fact that it then becomes necessary to divide Cook County and Chicago into two series of somewhat unrelated legislative districts, and perhaps also necessary to do the same for the rest of the state.

In connection with the subject of Cook County representation in the general assembly, attention should be called to the problem of apportionment for the election of judges to the Supreme Court. The seventh Supreme Court District (electing one judge) had in 1910 a population of 2,618,846, while the total population of the state was 5,638,591.

VII. LEGISLATIVE PROCEDURE.

A number of matters with respect to legislative procedure are dealt with by the constitution of Illinois. The constitution prescribes the quorum of the two houses, requires that the doors of each house shall be kept open, makes provision regarding the expulsion of members, and regarding the punishment of contempts. It also contains provisions regarding adjournments and a requirement that a journal be kept and published. The constitution also prescribes the enacting clause, and requires that on final passage of all bills "the vote shall be by yeas and nays upon each bill separately and shall be entered upon the journal, and no bill shall become a law without the concurrence of a majority of the members elected to each house." The provisions here referred to, which are contained in Article IV, Sections 9 to 12, have made no difficulty.

Some comment should be made regarding the journals of the two houses. Constitutional provisions in certain cases expressly require that certain action be taken and that it be entered upon the journals of the two houses; and in such cases the Supreme Court has properly held that such entries are necessary to the validity of legislation. In other cases the constitution expressly requires that certain action be taken (as that bills and all amendments thereto shall be printed before final passage), but does not require that the journals indicate that such action was taken. The court in 1912 took the view that the journals must affirmatively show compliance with these latter requirements (even though the constitution does not expressly require this), but the court has to some extent modified this view, and said that "where the constitution does not expressly require a fact to be recorded on the journals, and it can be inferred from a recital in the journals that such fact existed or such step was taken, then the presumption will be indulged that such fact did exist or such step was taken".¹

More important with respect to the procedure upon bills is Article IV, Section 13. This section makes a number of specific requirements with respect to the enactment of laws and these requirements need to be dealt with in greater detail.

Reading at large on three different days. The requirement that bills be read at large on three different days in each house is

¹ *Nelberger v. McCullough*, 253 Ill. 312 (1912). *Dragovich v. Iroquois Iron Co.*, 269 Ill. 478 (1915).

one which has obtained a place in state constitutions of this country largely as a result of the copying of English parliamentary procedure. This requirement was first adopted to meet conditions which have long ceased to exist. The requirement in the main was first insisted upon as a basis for giving information to members of a legislative body upon a measure before they were to vote upon it, and reading was the method employed at a period when printing was either non-existent or difficult, and the ability to read was not general. At the present time every bill introduced into either house of the Illinois general assembly is at once printed and copies are placed upon the desks of members on the next legislative day. The need for three readings at large in order to inform members of the contents of bills has therefore disappeared.

As a matter of fact, neither in the Illinois general assembly nor in other legislative bodies where such a requirement exists, is it complied with. To have the reading of every bill in full upon three separate days in each house of the Illinois general assembly would occupy a great deal of time and would serve no useful purpose, because no one would listen to the reading. It would be much easier for each member to read the bill independently himself. As a matter of fact, therefore, in Illinois as well as in other states the practice has developed of entering upon the journal a statement that the bill has been read at large on three separate days, when in fact this has not been done. In either house of the Illinois general assembly, for a member to insist that a bill be read in full is to employ obstructive tactics in connection with the conduct of legislative business.

The requirement of consideration of a bill by each house on three separate days is desirable, as a means of obtaining deliberation and of preventing the enactment of legislation by surprise. However, the useful purpose of this constitutional provision may be accomplished without linking such purpose with a requirement which has long proven useless and which has probably been retained in the constitution largely because it has been possible to disregard it.

In one state at least the Supreme Court has taken the view that a requirement of reading on three different days means that the bill with all of the essential features finally placed in it must be read on three separate days, so that if a bill has inserted into it by amendment important additions or changes, it is necessary in that state to start the three readings all over again.²

Printing of bills. The constitution requires that "the bill and all amendments thereto shall be printed before the vote is taken on its final passage." The constitution does not expressly require a journal entry to the effect that such printing has taken

² State ex rel. Pitts v. Nashville Base Ball Club, 127 Tenn. 292. But see People v. La Salle Street Trust and Savings Bank, 279 Ill. 518 (1915).

place, but the court in the case of *Neiberger v. McCullough*, (253 Ill. 312) took the view that compliance with this requirement must affirmatively appear upon the journals. This view has been somewhat modified. As a matter of fact, printing is ordinarily had, but an effort is made to see that proper journal entries are made, for an act may otherwise be attacked for technical non-compliance with the requirement if there is no such entry even where there was printing, whereas the act cannot be so attacked if the journal entries are proper even though the requirement itself may have been disregarded.

Subject matter and title. The constitution provides that no act hereafter passed shall embrace more than one subject and that shall be expressed in the title. This constitutional provision has been construed liberally. The court has always taken the view which permits related subject matters to be brought together under a proper title, and the rule as laid down by the court with respect to titles is not difficult to observe. Perhaps, however, attention should be called to the fact that occasionally the Supreme Court has been somewhat technical in these matters,³ although a technical view has not been generally taken and the rules laid down are desirable in connection with the enactment of laws.

Amendment by reference. The constitution provides that "no law shall be revived or amended by reference to its title only, but the law revived, or the section amended, shall be inserted at length in the new act." This provision was introduced into the constitution of Illinois for the purpose of preventing the amendment of previous laws by reference, in such a manner that by reading the later act it was impossible to tell what was sought to be accomplished thereby. For example, before 1870 acts were passed in substantially the following form "Be it enacted, etc., that Section 1 of an Act entitled, etc., is amended by inserting the words 'county' before the word 'State.' " In the case of such a bill, or of the act if it were passed, it was impossible to know what was being accomplished, and legislation of this type was often passed through the two houses of the general assembly without a knowledge of what was being done. Such an amendatory act was of course unintelligible unless compared with the section amended. The purpose of the constitutional provision was to require amending acts to set forth at length the section or sections amended.

From 1870 to 1900 the court applied the constitutional rules so laid down to acts which were expressly amendatory in form. Beginning with the case of *People v. Knopf*⁴ the court laid down

³ *Milne v. People*, 224 Ill. 125 (1906).

⁴ *People ex rel. Stuckart v. Knopf*, 183 Ill. 410 (1900).

the rule that if an act independent in form amends or adds new provisions to the existing law, then such act is amendatory of previous legislation, and the provisions of the law so amended must be set forth in the new act. That is, before 1900 the Supreme Court took the view that the constitutional provision regarding amendment by reference laid down a definite rule as to an act which expressly amended an earlier act. Since 1900 the court has taken the view that a new act entirely independent in form may be held unconstitutional if in the view of the court the new act so alters previous legislation that the two acts must be read together in order to find the law upon the subject. Theoretically, the later rule is a desirable one in that it seems to require a close coordination of new legislation with old legislation. Actually, however, the new principle as laid down by the court merely results in leaving to the discretion of the court in each case the determination as to whether an act is sufficiently independent to be upheld as an independent act, and the court, in passing upon this question with respect to a large number of acts independent in form since 1900, has not laid down any definite rule as to when an act will be held not amendatory of previous legislation and when it will be so held. With the large mass of statutes in force at any given time, it is possible to hold that practically any new piece of legislation is amendatory of earlier legislation, and with no definite principles laid down for the guidance of the general assembly in its determination as to what acts shall be independent in form and what acts shall be amendatory in form, the present rule practically sets up a guessing contest between the general assembly and the Supreme Court, in which the Supreme Court has the last guess. This situation has been an inevitable one, after the step was once taken of applying the constitutional rule to statutes independent in form, and the only way out of the present situation is probably to change the constitution so as to limit the provision to what appears to have been its original intent and to the interpretation given it by the Supreme Court before 1900. The clause as now interpreted occasions difficulties which greatly outweigh its advantages. For a further discussion of this subject see a chapter in the pamphlet entitled "Constitutional Conventions in Illinois," and the note to this clause in the Annotated Constitution.

Time when laws take effect. One of the important problems to come before the constitutional convention is that as to the time when laws shall become effective. The constitution now provides that "no act of the general assembly shall take effect until the first day of July next after its passage, unless, in case of emergency (which emergency shall be expressed in the preamble or body of the act), the general assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct". This provision was placed in the constitution upon the assumption that the general assembly would ordinarily

continue in session for only about three months, and that an interval of substantially three months would elapse after the adjournment of the general assembly before the laws come into effect.⁵

For a number of years it has been customary for the regular session of the general assembly to sit until close to the first day of July. The ordinary practice is for the general assembly to take a recess at least ten days before the first of July so as to permit the governor to act upon bills, then returning to hear the governor's veto messages. With substantially all legislation passed at the end of the session, the bulk of legislation therefore comes into effect almost immediately after it is enacted. In view of the large mass of legislation passed at the end of the session it is impossible to issue promptly the official text of the laws, and a period of from two to three months always elapses between the time when laws come into operation and the time when the full official text of such laws is available to the public generally.

To some extent the Secretary of State meets this situation by the immediate issue in pamphlet form of some of the more important laws, and an effort to give public information at least as to what laws have been enacted is made by the Legislative Reference Bureau through the publication immediately upon the adjournment of the general assembly of a digest of laws enacted. However, the present situation is a thoroughly unsatisfactory one, and in order to meet it some constitutional provision is necessary.

It will probably be suggested that a plan be adopted under which all laws shall come into effect within a certain period (say sixty or ninety days) after the adjournment of the general assembly. If the present legislative practices continue, such a provision would be satisfactory from the standpoint of general legislation, although there is value in having a definite date for this purpose which does not shift each two years. However, appropriations for the conduct of the state government present a different problem. If all laws were made to come into effect within a certain period after adjournment, the appropriation period would be a variable one each two years, and such an arrangement would be highly undesirable from the standpoint of an appropriation policy. In any plan, therefore, as to the time when laws are to come into effect, the problems of appropriation may have to receive separate consideration.

The present constitutional provision presents several difficulties in addition to the one bringing laws into effect when their texts cannot be known generally for a period of some three months. One of the difficulties presents itself with respect to special sessions. The constitution says that laws shall not take effect until the first day of July next after their passage, unless an emergency is declared and the vote of two-thirds of all the members elected to each house is obtained. In a special session called to meet a particular emergency, it may be that legislation is immediately necessary, and that a distinct majority will enact the legislation, but that a two-thirds vote to declare it in effect before the first day of the succeeding July will be impossible. Such a situation would be met by a constitutional provision bringing

⁵ Debates and Proceedings, Constitutional Convention, 1870, page 540.

laws into effect within a certain specified number of days after the adjournment of the session.

Another difficulty presented by the present situation is that as to the status of laws passed at the end of a regular legislative session, and either expressly approved by the governor or filed by him without objections after June 30. A situation of this character was presented to the Attorney General, and his opinion upon the matter will be found in the Attorney General's Report for 1917-18, page 573. The governor has ten days within which to act upon bills, and the ten days may often carry the consideration of bills beyond the first of July. If a bill should be approved on or after the first of July or if it should be filed with the Secretary of State after that date without objections, the question presents itself as to whether the bill must not wait until the first day of the succeeding July before coming into operation. The Attorney General has ruled that a bill passed by the two houses before July 1 but filed by the governor with the Secretary of State without objections after July 1, becomes effective upon the date upon which the Secretary of State makes his certificate of such filing. Under the ruling of the Attorney General, such an act was held to become effective on July 8, 1915, although as he suggests, this question will be a debatable one until it is finally decided by the Supreme Court.

Practical operation of Illinois legislative system. The procedure of legislative bodies is complex, and is largely based upon rules which have grown up through a number of centuries and which in the main are not and should not be embodied in constitutional provisions. Some of the matters bearing upon conduct of business in the two houses of the Illinois General Assembly should be commented upon in their bearing upon the operation of legislative institutions in Illinois. No effort will be made here to deal with the problems of legislative procedure in detail, but comment will be made upon some of the matters which have a more important bearing upon the subject.

Duplicate introduction of bills into the two houses. The practice has become almost the usual one in Illinois to have an identical bill introduced in the two houses at substantially the same time. It is supposed that some advantage results from having the same measure started upon its career in the two houses at the same time, and occasionally if a measure is popular, it will be passed by each of the two houses at substantially the same time. However, if a bill is introduced as, let us say, house bill No. 8 in the house, and senate bill No. 85 in the senate, it is, in fact, a separate and distinct measure in each house. If house bill No. 8 passes the house, and senate bill No. 85 passes the senate, the same subject matter has been acted upon by each house, but the same bill has not been acted upon by the two houses. What is done in such a case is that one of the bills, let us say the senate bill, will be

merely ignored and the house bill that has passed the house will then have to go through all the stages of senate passage just as if the senate had never done anything whatever with respect to the same measure. In this case, therefore, no time is saved and nothing is gained. This is the more common experience with respect to introducing the same measure in each of the two houses.

Some advantage, however, is thought to be gained by duplicate introductions in three respects:

(1) It is thought that a bill so introduced has an advantage through the fact that if there is an unfavorable committee in one house there may be a favorable committee in the other house, so that if the bill is not advanced in one house, it may be advanced and passed in the other house. Having passed one house, there will be a better chance of passing in the other house. The number of cases to which this notion applies is limited.

(2) Occasionally a bill fails because it is defective. So, a bill may have passed the senate and house and have been vetoed because defective. If the same measure had been introduced in the house and has reached second reading there, the measure in the house might then be taken up, amended and pushed through house and senate stages much more promptly than if no measure were already available in the house for such action. Under these conditions, two days might be saved in the passage of a bill through the two houses. This situation is one which infrequently presents itself, and the advantage here suggested is one which would occur only in the last days of a legislative session.

(3) It is oftentimes true that there is some advantage in having the members of each house develop a familiarity with a measure early in the legislative session, and something is often gained by having an important measure introduced into both houses so that it may be easier for the members of each house to become familiar with its terms. However, if a measure introduced in one house is really important, members of the other house are very apt to acquire some familiarity with it, without the necessity of duplicate introduction.

Over against the possible advantages of duplicate introductions in the two houses should be set the very great disadvantage of encumbering the calendars of each house. In the Fiftieth General Assembly (1917) 1,041 bills were introduced into the house and 612 into the senate. Of these 230 identical bills were introduced in each of the two houses. That is, if each of these bills had been introduced in the house alone the number of senate bills would have been 382. Substantially no advantage was gained from this duplication but there was a great expense, due to increased cost of printing, and in each house there was extreme difficulty due to cumbering the calendars with duplicate measures and duplicate committee considerations. To some extent there was difficulty due to the fact that substantially identical measures went to the governor upon the same subject, the two houses passing through all their stages two measures to accomplish the same purpose. For example, in 1917 house bill No. 290 and senate bill No. 286, dealing with

the same subject went to the governor; house bill No. 223 and senate bill No. 523, both dealing with the same subject, went to the governor.

Committees. In the house of representatives a substantial reform in committee organization was accomplished in 1915 by changes in the rules. This reform related to three things: (1) the number of committee was substantially reduced, (2) the size of committees was to some extent reduced, and (3) as a result of reduction in the number and size of committees, the number of committee memberships of each member was reduced. The house committee organization is, therefore, substantially satisfactory at the present time, although some of the committees are still much too large for effective work, and members of the house find it impossible to act effectively upon all the committees to which they are assigned. In the Fiftieth and Fifty-first General Assemblies (1917, 1919) each member was upon an average of four committees, and a large number were upon five committees. There is a distinct advantage in having a large appropriations committee, because that committee should, so far as possible, represent more or less the views of the house at large; but there is less justification for large committees for other matters, and the larger the committee the more difficult it is to get a quorum for meetings, and to get effective work.

In the senate, little has been done with respect to the reorganization of committees and of committee work. Although the senate is only one-third as large as the house, there are more committees in the senate than in the house. There were thirty-three standing committees in the senate in the Fiftieth General Assembly, and thirty-eight standing committees in the Fifty-first General Assembly. Upon one of these committees, that of appropriations, there were 43 of the 51 members in 1917 and the same number in 1919; and although there is some reason for a large appropriations committee, it hardly seems necessary that that committee should have upon it substantially the whole membership of the senate. But the appropriations committee is not the only large committee in the senate. Upon the committee dealing with consolidation of state agencies in 1917, there were thirty-three members. Upon the committee on agriculture and the committee on canals and waterways, and the committee on education in 1919 there were thirty-one members each. Upon the committee on industrial affairs in 1919 there were thirty-two members; upon the committee on public utilities there were thirty-four members, and upon the committee on roads, highways and bridges there were thirty-six members. In 1917 each senator had committee memberships averaging substantially eleven, and a number of these committees were of course important ones which were holding frequent sessions. In 1919 the size of committees was even greater than in 1917. Seven members of the senate of the Fifty-first General Assembly were each upon twenty or more committees, and one member was upon twenty-eight committees. A number of committees must necessarily hold sessions at the same time,

and to obtain a quorum in any of the large committees is therefore difficult if not actually impossible. No member of the senate is able to divide himself among eleven committees at the same time, and the leading members of the senate are not able to divide themselves among twenty committees. Although all of these committees would not be sitting at the same time, the difficulty is not very much lessened by the fact that the individual member is supposed to be in four or five committee meetings at the same time. In the senate, committees have almost necessarily ceased to be small bodies for the purpose of preparing business to be considered by a larger body.

There would be a distinct advantage if it were possible to have a uniform organization of the committees of the two houses, and there is some value in having joint committees such as are employed in New England. However, a close co-operation between committees of the house and senate is now difficult because the committees of the two houses are not uniformly organized.

The difficulty of having committees acting jointly is increased because of the fact that references of bills to committees are oftentimes not based upon the actual scope of a particular committee's activities. For example, in the Fiftieth General Assembly, a large number of bills in both the house and senate were referred to the judiciary committee, which might perhaps properly have been referred to another committee. The judiciary committees of the two houses are usually constituted very carefully and a measure which might properly go to another committee is often referred to the judiciary committee because the judiciary committee is regarded as one which will give more careful and more effective attention to the matter. This is a situation which will always continue. Matters are oftentimes referred to the appropriations committee in the first instance, or measures are sometimes reported out of the appropriations committee which might more properly be handled by other committees. Here again much of this sort of thing will be due to the fact that particular committees are more carefully constituted than are other committees of each of the two houses. However, if each house could have a committee organization uniform with that of the other house, a greater degree of co-operation between the two houses could be obtained and it would be possible to some extent to make use of joint hearings and of joint sub-committees. If there were some joint action of committees or some possibility of a joint committee calendar, it would be easier to deal with the difficulties of duplicate bills.

If committees are to be reconstituted, something may also be said in favor of co-ordinating committee organizations of the two houses with the executive organization of the state government. With the consolidation of administrative activities of the state government, committees will naturally expect, upon administrative measures, to consult with the departments having these particular matters in charge and, so far as these matters are concerned, there would be an advantage in having a committee organization planned to fit in with the state administrative organization.

Distribution of committee work. Perhaps the most serious difficulty with respect to committee organization is that the great body of committee work is done by a relatively small number of committees. In the Fiftieth General Assembly (1917) the number of bills introduced in the house was 1,041; of these 183 went to the committee on appropriations, and 277 to the committee on judiciary, making 460 out of 1,041. Other committees which had a large amount of business in the house were the committee on education with 63 bills, the committee on elections with 47 bills, the committee on municipalities with 89 bills, and the committee on insurance with 44 bills.

The statements just made relate to the distribution of senate bills to senate committees and of house bills to house committees. However, the same situation presented itself with respect to the distribution among senate committees of house bills that passed the house, and to the distribution among house committees of senate bills that passed the senate. For example, of the 239 senate bills which went to the house in 1917, 34 went to the committee on appropriations and 55 to the committee on judiciary. Of the 324 house bills that went to the senate, 77 went to the committee on appropriations, and 97 to the committee on judiciary.

Without a better committee organization and a more even division of business among the several committees, the situation is likely to continue of having certain committees overworked during all the time of a legislative session and others with little or nothing to do. This situation will continue to some extent no matter what committee organization there may be, because some committees will be more carefully constituted and will be more efficient than others and to these committees will naturally go the more important matters, whether such matters belong specifically within the scope of such committees or not. However, much may be accomplished by a more effective committee organization.

Committee proceedings. Difficulty has presented itself in this state through the irregularity of times for committee meetings and through uncertainty as to committee hearings. So long as senate committees are as numerous as they have been in the past, it is impossible to arrange well in advance a planned schedule of committee meetings and committee hearings, for it is substantially impossible to have a number of committees meeting at the same time. To a less extent the same statement is true of the house. If, however, some reorganization of committees were effected, it should be possible to plan formal times for committee meetings, so that members might know well in advance what committee plans they should make and so also that those desiring to appear at committee hearings should have sufficient notice of such hearings.

One difficulty which presents itself in the two houses results from failure of committees to make prompt reports of matters re-

ferred to them. Under the house rules, the house is able to control a bill and to force committee reports, but the somewhat cumbersome machinery of forcing committee reports or of forcing a bill from a committee's hands to the floor of the house is not likely to be much used. For the protection of committees themselves and in order to avoid the reporting of bills in large number near the end of the session, there should be some rule requiring prompt report upon referred bills. Such a rule, however, could hardly be made applicable to the appropriations committees of the house and senate, because appropriation matters cannot be dealt with in the form in which appropriation bills are introduced by the members of the two houses.

In the house and senate of the Fiftieth General Assembly (1917) a large number of bills were tabled at the end of the session, because they had not been reported out of committee at all or because they had been reported so late that any further action upon them was out of the question. In many cases, bills remained in committee at the request of the introducer of the bill, because the introducer preferred that the bill remain in committee rather than be reported unfavorably. However, it is distinctly preferable to have each bill acted upon by committee so that it may be tabled in the house or senate upon the basis of committee report or so that the introducer may obtain if possible a non-concurrence in the committee report.

Perhaps the most important thing to be considered is that of the desirability of having bills reported out of committees promptly so that they may be before the house in which they have been introduced, in order that action upon bills may be taken day by day during the earlier stages of the session, avoiding as far as possible the congestion of business which always takes place during the last few days of the session. If committees reported bills promptly, it is probable that the greater number of bills so reported would be reported unfavorably, and tabled by the house or senate. In this way the bills which are not to be passed could be disposed of promptly, and the calendar cleared of much matter which is not to receive consideration. This would be a much more satisfactory and a simpler way of disposing of a large mass of relatively unimportant or undesirable bills, rather than the present plan of leaving such bills in committee to be tabled at the end of the session.

Careful examination of each bill before final passage. There is no machinery now existing in either house of the General Assembly nor in the two combined for the careful scrutiny of each bill before final passage to see what defects there may be in it, and how it fits in with existing legislation. Such a scrutiny is accomplished in Massachusetts by a committee on bills in the third reading and the Massachusetts house rule provides that "the com-

mittee on bills in the third reading shall examine and correct the bills which are referred to it for the purpose of avoiding repetition and unconstitutional provisions, insuring accuracy in the text and references, and consistency with the language of existing statutes; provided, that any change in the sense or legal effect, or any material change in construction, shall be reported to the house as an amendment." This committee has a trained secretary and seeks to do what is here suggested as desirable. With respect to the problem here under consideration, an organization such as that here commented upon could accomplish a good deal not only in improving the final form of bills but also in preventing duplication in the enactment of measures, and in co-ordinating all of the legislative work of a session. Bills before they come to final passage in either house quite frequently have amendments adopted to them which to some extent change the scope or character of the bills, and oftentimes such bills are passed and sent to the governor without any effort to co-ordinate the amendments with the somewhat different plan of the original bill. A problem which presents itself also in this connection is that of co-ordinating amendatory bills. It often happens, under the constitutional rule in this state with respect to amendments, that several bills are introduced, each seeking to amend the same section of a prior statute. To pass several bills, each amending the same section of a statute, would be futile, because the bill last passed would control, and none of the amendments to the section would be of any effect unless included in that bill. No machinery now exists for the purpose of co-ordinating all amendments to the same action of a previous act.

End of the session rush. In every session of the Illinois General Assembly the bulk of the legislative work is done during the last few weeks, so far as the passage of legislation is concerned. The regular session of the Fiftieth General Assembly began January 3, and no action upon bills was taken after June 16, 1917. The number of actions on bills by the two houses from January 3 to June 4 was very little greater than the number of such actions taken by the two houses from June 4 to June 16, and in the enactment of legislation the amount of business from June 4 to June 16 was much greater than that previous to June 4. Of 271 house bills passed in the senate in the Fiftieth General Assembly (1917), 183 were passed in the senate on and after June 4; of 137 senate bills passed in the house in 1917, 103 were passed by the house on and after June 4. Of the 239 senate bills passed by the senate, 45 were passed on and after June 4, and of the 324 house bills passed in the house 130 were passed on and after June 4. The bulk of the legislation passed by both houses was enacted on and after June 4 in 1917. In the Fifty-first General Assembly (1919), of the 242 senate bills passed in the house 179 were passed on and

after June 4; of the 228 house bills passed in the senate, 194 were passed on and after June 4; of the 261 house bills passed in the house in 1919, 92 were passed on and after June 4, and of the 320 senate bills passed in the senate in 1919, 136 were passed on and after June 4. In comparing the figures for the sessions of 1917 and 1919, it should be borne in mind that the two houses took their final recess in 1917 on June 16, and in 1919 on June 20, so that there were four more legislative days after June 4 in 1919 than in 1917.

The last two weeks of a legislative session are converted into a succession of roll calls and the enactment of bills is a very rapid performance, in which undue haste is essential if the measures are to get through before adjournment. In Illinois there has not been in recent years the abuse of a so-called short roll call, in which bills are passed upon a roll call which consists of calling the first and last names upon the list of members, but bills passed as they are in the last few days of the session in Illinois cannot receive adequate attention.

The notion has developed among a great many members that it is easier to get a bill through in this rush at the end of the session than earlier, and for this reason many bills are definitely held up until near the end. Substantially the only effect of this rush is that measures receive insufficient attention and that many meritorious measures are defeated simply because of the lack of time for the presentation of their merits.

Moreover, measures enacted at the end of the session come to the governor in great numbers for action within ten days which he has for approval or veto, and executive action must therefore necessarily be much less careful than if the measures came to the governor in smaller numbers at regular intervals during the session. Although the present rules of the two houses have gradually developed, it would almost seem that they have been planned for the purpose of producing a great rush of business at the end of the session. Rules of the two houses which now contribute to this situation are the following:

(a) A committee may hold a bill without report as long as it sees fit and may report it toward the end of the session.

(b) After the committee has reported the bill (even if the committee reports promptly), the member introducing or in charge of it in either house may not urge it to second reading or to a third reading and vote, either because of lack of interest, or because of a fear of the result.

It is true that the daily calendars indicate an order of bills, but the order in which bills actually come up is different, and depends to a large extent upon unanimous consent. Of the 147 house bills on the house calendar for June 5, 1917, for second reading, the first twenty-two were not taken up at all. None of the remaining bills on the house calendar for that day were called up in the order in which they appeared on the calendar. In the senate on June 5, 1917, the bills were called up more in the order in which they appeared on the senate calen-

dar. Both in the house and in the senate, the rules do not force a consideration or disposal of bills by committees, or by the two houses, in the order in which they are presented, and the degree of promptness with which a bill is urged for consideration depends to a very great extent upon the individual member who presented the bill or who is in charge of it. That is, upon this important matter, the order of business in the two houses is dependent not upon the calendar or upon the order in which business is presented, but is primarily dependent upon the will of the individual members with respect to when their matters shall receive consideration. The individual member is in command of the order in which steps shall be taken upon his bill.

A very large number of the bills in each house should properly be reported unfavorably by committees. If they were unfavorably reported and were so reported promptly, in only a few cases would such bills ever receive further consideration. Such a reporting would to a very great extent clear the records of the committees and of the house, and concentrate attention upon the more important measures which are likely to receive a real consideration. Upon all measures that receive favorable committee action, or that are likely to receive such action, there should be an opportunity for deliberation in the houses themselves; and this deliberation cannot take place unless there is a fairly prompt committee report, followed by a fairly prompt consideration in the house itself after the committee report has been made. The individual member who has introduced a measure should not be permitted, either because of fear or indifference, to keep that measure pending indefinitely upon the calendar so as to cumber the calendar and force over-hasty consideration of measures at the end of the session.

The necessarily lesser consideration of each bill by the house and senate in the rush at the end of the session and the difficulties presented to the governor in his passing upon bills have been suggested above. The difficulties with respect to enrolling and engrossing are also materially increased in the end of the session rush.

There is no rush at the end of the session in the Massachusetts general court, although in Massachusetts the number of bills introduced and passed at each session is larger than that in Illinois. The Massachusetts rules are devised largely for the purpose of obtaining a prompt consideration of legislative measures. Substantially all measures are introduced early in the session. Legislative rules require committees to report before the second Wednesday in March on all matters that have been referred to them before that date. This time may be extended for one month but when the date for report has expired, all measures still in the hands of any committee must be reported within three days. This rule does not apply to appropriation bills. After report and second reading, bills in Massachusetts go to the committee on third reading of bills and if not reported promptly from this committee a report may be forced. This committee ordinarily reports within two or three days and if it desires to hold a bill longer it reports this fact. When reported upon by the committee on third reading of bills, the bill is then voted upon in the house in which

it is presented. Through the rules and practice in the consideration of bills by the Massachusetts general court, each step upon a bill is substantially forced after the previous step has been taken. In Illinois there are no rules forcing prompt action in the taking of the various steps involved in the consideration of bills, and for this reason most bills remain until the end of the session for consideration.

Rules of procedure in constitutions. This discussion of the procedure in the two houses has been placed here for the purpose of indicating more clearly certain of the important legislative problems in this state. The most important single problem is of course that with respect to the rush of business at the end of the session. It is not, however, desirable that rules of legislative procedure should be placed in the constitution. Some states have details as to legislative procedure in their constitutions. And these details have either worked badly or means have been found for disregarding them. The constitution of 1870 contains a number of rules and certain of these rules now make difficulty, although the present constitution does not regulate matters of legislative procedure in detail. Constitutional provisions regarding such matters as titles and printing of bills are intended primarily to prevent the enactment of legislation without proper notice to the members of the two houses. It has for this reason been suggested that the constitution provide a date after which the constitutionality of laws should not be open to attack upon these grounds. Such a view finds some support in decisions by the Supreme Court.⁶

The subject of appropriation methods has not been treated here, but will be found fully discussed in Bulletin No. 4, dealing with state and local finance. One constitutional limitation upon legislative action is that with respect to the separation of appropriations for officers from other legislation. In Bulletin No. 4, attention has been especially directed to this constitutional provision. It is desirable that matters of general legislation should not be united with matters of appropriation, but there is little value in such a constitutional provision as that of Illinois which separates the appropriation for officers from appropriations for other purposes but does not necessarily separate appropriations from other types of legislation.

⁶ Richter v. Burdock, 257 Ill. 410 (1913). See also Greenberg v. City of Chicago, 256 Ill. 213 (1912).

VIII. RELATIONS OF THE LEGISLATIVE DEPARTMENT TO OTHER PARTS OF THE GOVERNMENTAL ORGANIZATION.

Special sessions of the General Assembly. The constitution provides in Article V, section 8, that "the Governor may on extraordinary occasions convene the General Assembly by proclamation stating therein the purpose for which they are convened, and the General Assembly shall enter upon no business except that for which they were called together." Under this constitutional provision, if the governor convenes a special session of the General Assembly, and other matters arise after his proclamation for this purpose, the only method of obtaining consideration of such other matters is by convening another special session. Of course, it is possible to issue a proclamation convening another special session, even though the General Assembly is already in special session, but this is a cumbersome means of accomplishing the desired purpose. A much better plan is to provide that the governor may convene a special session, indicating in his proclamation the matters to which the special session is to be limited, but with authority to specify at a later time further matters that may be considered in such session.

In case of disagreement between the two houses with respect to the time of adjournment, the governor may on such disagreement being certified to him by the house first moving the adjournment "adjourn the General Assembly to such time as he thinks proper, not beyond the first day of the next regular session." This power in the governor to adjourn the two houses is one which will, of course, be used infrequently,¹ and it has not been employed since the adoption of the constitution of 1870.

Veto power. Under the first state constitutions in this country little or no power over legislation was vested in the governor. The distrust of the legislature which developed rather promptly after the framing of the first state constitutions led, however, to the conferring of a veto power upon the governor, and there has been a definite tendency toward an increase of this power. Under the constitution of 1818, a veto power was vested in a Council of Revision composed of the governor and the judges of the State Supreme Court, but their power was subject to be overcome by a majority of the members elected to each of the two houses. The Council of Revision disappeared in 1848, and a

¹ For Governor Yates' use of this authority in 1863, see the case of *People v. Hatch*, 33 Ill. 9 (1863).

veto power was vested in the governor acting alone, but the governor's veto in this constitution could also be overcome by a mere majority vote of the members elected to each of the two houses. By the constitution of 1870 the governor's veto power was made more effective by the provision that it could be overcome only by a vote of two-thirds of all the members elected to each of the two houses. The governor's authority was still further extended in 1884 by the adoption of a constitutional amendment conferring upon him the power to veto items of appropriation bills.

The veto power in this state has been effectively exercised, and a full discussion of the cases in which it has been employed will be found in a study by N. H. Debel on *The Veto Power of the Governor of Illinois*.²

In the development of the governor's veto power, Illinois parallels the development in substantially all of the other states of the country. Ohio in 1903 and Rhode Island in 1909 first vested a veto power in the governors of those states, leaving North Carolina as the only state which now does not grant such a power to its chief executive. The development of the governor's veto power over items of appropriation has been a rapid one in this country. Since 1900 the states of Virginia, Ohio, Oklahoma, Michigan, Kansas, Arizona, New Mexico, Oregon and Massachusetts have vested such an authority in their governors, and such power now exists in three-fourths of the states.

There has been a tendency in some states to extend still further the governor's veto power. The Washington constitution of 1889 and the South Carolina constitution of 1895 confer upon the governor the power to veto any section or sections of a bill presented to him. Ohio in 1903 conferred a similar power upon its governor to veto sections in bills other than appropriation bills, but this authority was withdrawn in Ohio by constitutional amendment in 1912.

The Alabama constitution of 1901 permits the governor to propose an amendment to remedy any feature of a bill which he does not approve, and if his proposed amendment is not adopted by the two houses, the bill, in order to become a law, must be passed over the executive veto. The Virginia constitution of 1902 also gives the governor power to recommend the amendment of a bill if he approves its general purpose but disapproves any part thereof, and in this state the bill, if amended by the two houses or if they fail to amend it in accordance with the governor's recommendation, is again returned to the governor for his approval or disapproval.

A Massachusetts constitutional amendment adopted in 1918 provides that: "The Governor within five days after any bill or resolve shall have been laid before him, shall have the right to return it to the branch of the general court in which it originated with the recommendation that any amendment or amendments specified by him be made therein. Such bill or resolve shall thereupon be before the general court and subject to amendment and reenactment. If such bill or resolve is re-enacted in any form it shall again be laid before the Governor

² University of Illinois Studies in the Social Sciences, Vol. 6, Nos. 1 and 2 (1917).

for his action, but he shall have no right to return the same a second time with a recommendation to amend." A somewhat similar provision is made by an Act of 1905 with respect to the power of the mayor of the City of Chicago.³ Under this law, the mayor in returning an ordinance to the council without approval may submit with his objections thereto a substitute ordinance, and such substitute ordinance may be considered at once after the action upon the mayor's disapproval of the original ordinance.

With respect to appropriations, there has been in recent years a tendency to increase very materially the governor's control. Under the Maryland budget amendment of 1916, which is commented upon in the pamphlet dealing with state and local finance, the governor submits the general state budget to the two houses of the legislature, and the legislative bodies have no authority to increase the items in the budget so proposed. However, in view of the fact that the governor prepares the budget which the legislature cannot increase, the governor's veto power over this matter was withdrawn in Maryland. Under a Massachusetts budget amendment of 1918 the governor also submits a proposed budget, but the general court of that state retains power to increase or otherwise change the items of the budget. However, the governor is at the same time vested with power to veto items of the budget or parts of items or to reduce items.

In the various ways just indicated above, the governor's control over legislation has been materially increased. In the main, however, the control over legislation vested by state constitutions in the governor is a negative control. Aside from the few cases which have just been commented upon, the governor's veto power in Illinois and other states is a power of preventing action and not one of positive share in the legislative action to be taken. The veto power as such has become in the state of Illinois an almost purely negative influence, because of the fact that most bills sent to the governor are passed in the last days of the session. After passing a great number of bills toward the end of its session, the General Assembly in recent years has taken a recess in order to give the governor time to act upon the bills which come to him. The General Assembly then convenes after the recess to hear the governor's veto messages, but a quorum is practically never present at such meeting, and there is therefore no power either of overcoming the governor's veto or of taking advantage of any suggestions which the governor may have made for the improvement of legislation. The governor's power through the exercise of the veto is for this reason almost purely negative in this state, both with respect to appropriations and with respect to general legislation; although an affirmative influence is exercised by the veto power with respect to the rather small number of bills which may come to the governor well before the end of the legislative session.

The constitution of 1870 provides that the governor shall at the commencement of each session and at the close of his term of office give to the General Assembly information by message of the condition of the state and shall recommend such measures as he shall deem expedient.

³ Hurd's Revised Statutes, Chap. 24, Sec. 193a.

It also requires that he shall account to the General Assembly and accompany his message with a statement of all moneys received and paid out by him from any funds subject to his order, with vouchers, and at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

The governor has, of course, always sent messages to the General Assembly recommending the measures which he thinks should be enacted. Under the Civil Administrative Code of 1917, the governor at the session of 1919 prepared a budget which was submitted to the two houses of the General Assembly as the recommendation of the governor. This budget was substantially enacted by the two houses, in so far as the matters covered by it affected the offices immediately dependent upon the governor.

The governor's greatest influence in legislation is exercised in a manner not covered by the text of the constitution or by the terms of legislation. If the governor and the majority of the two houses of the General Assembly belong to the same political party, the governor may exercise a large influence over the actual character and quality of legislation. Such influence depends, of course, primarily upon the personality of the governor and upon the effectiveness with which he is able to co-operate with the two houses, even when they belong to the same party. In some cases in Illinois and in other states there has during certain periods been a very close and effective relationship between the governor and the General Assembly in the actual working out of legislative policies. However, this close relationship is oftentimes interfered with, by virtue of the fact that one or the other or both houses may have majorities which are politically antagonistic to the governor. Although there have been in recent years few cases in Illinois in which there has been a definite partisan division in the General Assembly with respect to matters of legislation, party influences will prevent close co-operation between the governor and legislative houses controlled by the party in political opposition to him.

General Assembly as a canvassing body. By section 4, article V of the constitution, the speaker of the house of representatives opens and publishes the returns of elections for state officers, "in the presence of a majority of each house of the general assembly." In case of a tie, the general assembly chooses one of the highest candidates. Contested elections are determined by joint ballot "in such manner as may be prescribed by law." These functions have made difficulty in some cases because delays have taken place in the organization of the house of representatives. In case of a close election the constitutional provisions vest an important political power in the general assembly.

Legislative appointments. Under the constitution of 1818 a large power of appointment was vested in the General Assembly.

This power of appointment was not satisfactorily exercised, and by the constitution of 1848 it was explicitly provided that no officer should be appointed or elected by the General Assembly. This provision is repeated in the constitution of 1870.⁴

One of the most disturbing influences with respect to the function of legislation before 1913 was the duty imposed upon the state legislatures to elect United States Senators. Since the adoption of the federal constitutional amendment for the popular election of United States Senators, this distinctly political function has disappeared, and its disappearance has been of advantage in avoiding the choice of legislators for other than legislative purposes.

The non-legislative functions of the Illinois General Assembly have since 1818 steadily tended to decrease. The function of making appointments disappeared in 1848, and that of electing United States Senators in 1913. These non-legislative functions are now relatively unimportant, although they do deserve attention in the framing of a new constitution or the amendment of the existing constitution.

Functions in connection with appointment and removal of officers. The constitution of Illinois contains several provisions with respect to the matter here dealt with. In the case of officers whose appointment or election is not otherwise provided by law, the governor nominates, and by and with the advice and consent of the Senate, appoints. This power of senate confirmation is one which is quite common in the American states and is also, of course, established by the constitution of the United States. This senatorial control over executive appointments dates from the period in earlier American history when it was deemed necessary to set up an executive council or to have the senate act as such a council for the control of executive functions. It is a remnant of the early distrust of executive power, which has now largely disappeared. The exercise of the power of Senate confirmation has occasioned some difficulty in Illinois, but has probably not proved of very great use.

The constitution provides in Article VI, section 30, that the General Assembly may for cause entered on the journals upon due notice and opportunity of defense remove from office any judge upon the concurrence of three-fourths of all the members elected to each house. The more common provision with respect to removal by the two houses is that removal may be made by address of the legislature or by two-thirds of the members elected to each house. Only in a very clear case would this power be exercised in any state, and in Illinois the requirement of a vote of three-fourths of the members elected to each house is likely to make the power of removal practically incapable of exercise even in the cases where its use may be desired.

⁴ For a discussion of legislative appointments, see Reinsch, P. S., *American Legislatures and Legislative Methods*, p. 222.

The state of Massachusetts provides that all judicial officers shall hold their offices during good behavior, but that the governor with the consent of the council may remove them upon address of both houses of the legislature. This power has been exercised upon several occasions in Massachusetts. It will be noted that the power in Massachusetts under the constitution of 1780 is vested in the governor with the advice of the council to remove upon the address of both houses. The council is a popularly elected body serving as an advisory board to the governor. In 1918 the power of removing judges was still further increased in Massachusetts by the adoption of a constitutional amendment providing that: "The Governor with the consent of the council may after due notice and hearing retire them [judges] because of advanced age or mental or physical disability; such retirement may be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement." In Massachusetts there is also a power to remove by impeachment.

The power of removal by the two houses applies only to judges in Illinois. With respect to other civil officers, the constitution also provides for removal by impeachment. The house of representatives by a majority of all the members elected must concur in presenting impeachment charges. Such charges are tried by the senate, and when sitting for that purpose the senators are under oath or affirmation to do justice according to the law and evidence. No person may be convicted without the concurrence of two-thirds of the senators elected.

Judge Theophilus W. Smith of the Illinois Supreme Court was impeached in 1833 and narrowly escaped conviction. After his acquittal by the senate, the house by two-thirds vote passed a resolution for his removal by address, but the resolution failed in the senate. The remarks of Governor Thomas Ford with respect to this impeachment proceeding still have application: "Afterwards, other efforts were made to impeach judges for misconduct but without success. So that latterly the legislature has refused even to make an effort to bring a judge to trial; knowing that whether guilty or innocent such an effort can have no other result than to increase the length and expenses of the session."⁵

In 1839 a memorial was presented to the house of representatives praying that a judge "be impeached and addressed out of office," and this memorial was made the basis for the adoption of a political resolution that a change in the membership of the Supreme Court was desirable, although the judge whose removal was petitioned for was not a member of that court. In 1847 a number of petitions for the removal of a judge were presented to the house of representatives, and one was presented to the senate.⁶ The cases above referred to all related to judges, although the machinery of impeachment may be employed against other officers. Neither impeachment nor removal of judges by the two houses is likely to be employed except in an extreme case, and if easier

⁵ Senate Journal, 1833. Appendix. Ford, Thomas, History of Ill. 166-168.

⁶ House Journal, 1839, p. 144. House Journal, 1847, pp. 228, 265, 266, 328, 387. Senate Journal, 1847, p. 196.

methods of removal are desired, neither of these plans can be relied upon.

The problem of removal both of judges and of others should be considered, of course, in connection with the much broader problem of removing lesser state and local officers. Formal and perhaps somewhat cumbersome methods of removing important officers may be desirable, because the ordinary methods of removal could hardly be made applicable to the governor and other important state officers or to justices of the Supreme Court, because even though less formal methods were technically applicable, they are not likely to be employed in such cases. Impeachment as a method of removal has been infrequently employed in this country but in a number of important cases it has been an effective and useful instrument. Perhaps, however, it may be worth while to consider whether removal by the two houses may not be made somewhat simpler than it now is.⁷

Power of the courts with reference to legislation. The power of the courts to declare laws unconstitutional is expressly recognized by two provisions of the present constitution of Illinois. Art. IV, Sec. 13 provides the conditions of invalidity of acts because of defective title or because such acts embrace more than one subject matter, and pretty clearly implies that the power to determine invalidity shall be exercised by the courts. In Art. VI, Sec. 11 of the constitution it is expressly provided that matters regarding the validity of a statute may not be finally determined by the appellate courts.

The exercise by the courts of the power to declare laws unconstitutional is one of the important features of our governmental system, and the courts in Illinois have frequently exercised this power. A full discussion of the power of the courts to declare laws unconstitutional and of the manner in which this power has been exercised in Illinois will be found in a separate pamphlet devoted to the judicial department. It is sufficient here merely to call attention to this power in connection with a general discussion of the relation of other departments of the state government to the problems of legislation.

The constitution of 1870 provides that "all judges of courts of record inferior to the Supreme Court shall on or before the first day of June of each year report in writing to the judges of the Supreme Court such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall on or before the first day of January of each year report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws." Provisions

⁷ For a discussion of the whole subject of removal of judges and of impeachment, with special reference to Massachusetts, see Massachusetts Constitutional Convention Bulletin No. 36 entitled "The removal of Judges in Massachusetts."

with respect to the reporting of defects in the laws by judges were first introduced by statute in Illinois, and this reporting of defects was of some effectiveness in connection with the revision of the statutes authorized in 1869.⁸

Attention should be called, however, to the fact that the duty to report defects in the laws was at first imposed largely as a means of justifying a further appropriation to supplement the salaries of judges. The salaries of circuit judges had been fixed at a very low figure by the constitution of 1848, and some subterfuge was desired as a basis for appropriating further money to these judges. The constitutional provision requiring the reporting of defects in the laws was then taken over from statute, and has been copied into the constitutions of several other states since 1870. This constitutional provision has since 1870 been almost entirely ineffective. The only case in which a definite effort was made to bring it into operation was in connection with primary election legislation in this state. After several unsuccessful efforts had been made to enact a constitutional primary election law, Governor Deneen on July 14, 1909, addressed a letter to the chief justice of the Supreme Court, referring to the provision of Art. VI, Sec. 31 of the constitution, and requesting that the court redraft provisions of the primary election law held unconstitutional so as to eliminate therefrom all unconstitutional features and to correct other defects. The judges of the Supreme Court declined to comply with this request, saying that there was no obligation upon them to do so.⁹

⁸ Laws 1869, pp. 49 and 50.

⁹ Correspondence between governor and judges, 243 Ill. 9 (1909).

IX. LEGISLATIVE POWERS.

The prevailing theory with respect to the state legislature is that it has all powers not clearly denied to it by the constitutions of the United States and of the state. The state constitution is ordinarily held to be a limitation upon the power of the legislature and not a grant of power to that body.¹ And, as a result of this it is often urged that, inasmuch as state legislatures have all power not forbidden to them by their state constitutions, provisions in constitutions expressly conferring power upon legislatures are mere surplusage. However, such grants have in many cases become necessary in order to loosen the effect of broad constitutional guarantees as interpreted by the courts. Many of the constitutional provisions which have of late been appearing in the several states are justified because in legal fact they do broaden legislative power, although in theory they are not supposed to have such an effect.

When broad constitutional provisions are interpreted in such a manner as to limit the legislative department in practically anything that it may do, specific authorizations to act may often become necessary in order to re-vest in the General Assembly powers which have been held to violate such broad guarantees, or which are likely to be so held.

A few illustrations will make clear the fact that some state constitutional provisions serve to extend legislative power. Of the constitutional amendments adopted by the people of Ohio in 1912, the following four, among others, related to social and industrial legislation: (1) Authorizing legislation with respect to mechanics liens. (2) Authorizing legislation, regulating and fixing hours of labor, establishing a minimum wage, and providing for comfort, health, safety and general welfare of employees. (3) Permitting compulsory workmen's compensation. (4) Prescribing an eight-hour day on public works.

At least two of these amendments were occasioned by judicial decisions that legislation was forbidden by broad state constitutional language equivalent to the "due process" clause in other constitutions. The other authorizations in these amendments were inserted as a matter of caution to prevent judicial annulment. Two of these amendments expressly provided that "no other provision of the constitution shall impair or limit" the powers so granted.

A provision was inserted in the Michigan constitution of 1908 that "the legislature shall have power to enact laws relative to the hours and conditions under which women and children may be em-

¹ *People v. Nellis*, 249 Ill. 12 (1911).

ployed," and this provision relieved such legislation from attack on the ground that it violated the "due process" clause of the Michigan constitution.²

The fact that the constitution of Illinois authorizes legislation regarding the safety of miners apparently gives to the General Assembly of this state greater legislative power as to this subject than as to the health of miners.³ Article IV, Section 29 of the constitution of 1870 with respect to the safety of miners can thus be readily justified in view of subsequent decisions of the Supreme Court of this state. Article IV, Section 30 of the constitution of 1870 authorizing the opening of roads and cartways for private and public use was expressly made necessary by a judicial decision,⁴ and an amendment of 1878 to Section 31 of the same article (although it seems to be more detailed than is necessary in a constitution), was made necessary by judicial decision.⁵

These and other provisions have been inserted into state constitutions because it is desired that legislatures should exercise certain powers, and experience has proven that without express constitutional grants, state courts will deny such powers to the legislatures. State constitutions contain a number of provisions authorizing different types of labor legislation or themselves laying down legal rules to be observed. Such provisions find their justification in view of the statements just made, although they are not properly matters of fundamental law. For example, the decision of the court of appeals of New York that compulsory workmen's compensation could not constitutionally be established in that state, rendered necessary a constitutional amendment in that state in 1913, and the view of the New York court upon this matter has been responsible for numerous constitutional amendments of the same character in other states, although such constitutional provisions are probably now no longer necessary, because the courts have come to take a more liberal view with respect to compulsory workmen's compensation legislation.

The whole movement for the limitation of labor upon public works to eight hours a day is one which has found expression in state constitutions, and such expression in state constitutions was rendered necessary, if such a limitation were to be obtained, because of the fact that decisions of the highest courts in New York, Colorado and other states held that the placing of such limitations was beyond the constitutional power of state legislatures, under the "due process of law" and "equal protection of the laws" clauses.

What is said above explains why numerous matters not properly fundamental have found their way into state constitutions. Where it is desired by the people that a certain thing be done, and the state supreme courts hold that broad state constitutional provisions prevent that thing being done, the only possible alternative is that of placing an express provision as to the matter in the state constitution.

² Proceedings and Debates, Michigan Constitutional Convention, 1003-1005; *Withy v. Bloem*, 163 Mich. 419.

³ *Millett v. People*, 117 Ill. 294 (1886); *Starne v. People*, 222 Ill. 189 (1906).

⁴ *Nesbitt v. Trumbo*, 39 Ill. 110 (1866).

⁵ *Udpike v. Wright*, 81 Ill. 49 (1876).

Of course, the placing of such provisions in state constitutions would be entirely ineffective were the things to be done also held unconstitutional as violating the "due process" and "equal protection of the laws" clauses of the fourteenth amendment to the United States constitution. However, the reason for placing these provisions in state constitutions is that the highest state courts have in many cases been stricter in their interpretation of broad clauses in the state constitutions than the United States Supreme Court has been in interpreting equivalent or identical clauses of the constitution of the United States. What is done by these constitutional grants of power, therefore, is in large part to prevent the state supreme courts from taking a narrower view as to what constitutes "due process of law" than does the United States Supreme Court, and this is substantially the only effect of such state constitutional grants of authority. However, such grants have been necessary in many cases in order to permit the states to free themselves from limitations placed upon legislative power by a narrow construction of "due process of law" and of other provisions in state constitutions.

Another alternative may present itself with respect to matters such as are here dealt with. The "due process of law" clause in the constitution of Illinois, and that in Article IV, Section 22 of the constitution regarding the conferring of special privileges, immunities and franchises by special legislation have been construed broadly in this state as similar clauses have been in a number of other states; and as construed by the state courts may prevent the enactment of legislation which would be upheld by the United States Supreme Court as not in violation of substantially identical federal limitations upon the states. So far as actual advantage is concerned, the federal provision that no state shall "deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws" constitutes a complete guaranty against improper state action. These federal limitations upon the states may and ultimately do obtain a uniform interpretation for the whole country. Identical state constitutional limitations, on the other hand, are finally interpreted for a particular state by the highest court of that state, and in this manner a state oftentimes has imposed upon its legislature limitations of a much stricter character than those imposed by the same language in the constitution of the United States. The presence of duplicate federal and state limitations upon the states, the one interpreted finally and uniformly for the whole country by the United States Supreme Court, and the other interpreted somewhat differently for the particular states by the state supreme courts, are the things which here make the difficulty, and no rights which may need to be judicially protected would be in any way interfered with by removing guarantees of this type from the state constitution. To say that the removing of such a duplicate guaranty from the state constitution would impair rights which should be protected, is to say that the supreme court of the United States cannot be relied upon to protect such rights adequately under an identical federal constitutional provision.

There is great value in leaving out of constitutions all matters of detail and all matters in the nature of legislative grants, if such matters can be omitted and at the same time the framers of the constitution can be sure that the things they desire to have done may be accomplished. If grants with respect to legislative authority are placed in a constitution, there is always danger that such grants will themselves be construed as limitations. For example, the framers of the Nebraska constitution of 1876 provided that the General Assembly of that state should have authority to establish reform schools for children under the age of sixteen years. This provision was actually unnecessary even as a means of relieving the General Assembly from any limitations which might have been imposed by the court, but the granting of authority to the General Assembly to establish one type of reform school was construed as limiting the General Assembly to the establishment of that type of reform school only, so that when the General Assembly wanted to permit persons of a somewhat greater age to be sent to a reform school, this was held to be beyond the legislative power. So a constitutional amendment authorizing the establishment of a particular type of workmen's compensation is, under the decisions of this country, almost certain to be held to prohibit the establishment of any other type of workmen's compensation. In California a constitutional provision was adopted in 1900 authorizing the enactment of a certain type of direct primary legislation, and this was held to prohibit the enactment of any other type of direct primary legislation.

That is, a provision in a constitution which seeks to grant power or which seeks to determine the details of proceedings is generally held by the courts of this country to prohibit the doing of the things in any other manner than that covered by the terms of the constitution. Many provisions which are inserted for the purpose of granting authority to the General Assembly do not increase that body's power, but serve unintentionally as a means of limiting the power sought to be conferred. This is the effect of article XI, section 14 of the present constitution regarding the use of the power of eminent domain to condemn the property and franchises of corporations.⁶

Of course it would have been possible to construe directions or grants of power to the legislature as merely authorizing or commanding the doing of the particular thing, and as not limiting the legislature as to other things which it might do with respect to the same matter. However, this view has not been taken by the courts, and the view has usually been taken that every provision of a state constitution should be construed as limiting legislative power to the greatest possible extent. It has been true in this country that for a number of years every provision placed in a constitution affecting the legislature directly or indirectly (even though the provision is intended to enlarge the power of the legislature) becomes at once by interpretation a limitation of a general grant of power. A provision once inserted into a state constitution, no matter for what purpose it may have been inserted, is given a broad effect as a limitation upon such power, and this judicial view

⁶ L. S. & M. S. Ry. Co. v. C. & W. I. R. R. Co., 97 Ill. 506 (1881).

has had some justification in view of the fact that the whole development in state constitutions until recently has been toward imposing express limitations upon the power of legislatures.

The matter here dealt with is sometimes referred to as the development of implied limitations upon the legislature. That is, from a provision not intended primarily as a limitation, or from a provision which may have been intended to compel a certain type of action with respect to a matter, further limitations are implied upon the legislature with respect to that matter. For example in the case of *People v. Hutchinson*,⁷ the Supreme Court had under consideration the constitutional provision commanding the General Assembly to apportion the state every ten years after a federal census. There was no express limitation upon the power of the General Assembly to apportion at other times, and had judicial construction followed what is still the legal theory that the legislature has all power not denied, this provision could well have been construed to command senatorial apportionments after each decennial census, and to permit senatorial apportionments at such other times as the General Assembly thought desirable. However, the Supreme Court took the view that the constitution limits the apportionment to one in each ten-year period after a federal census, thus extending the constitutional limitation beyond its precise terms. We have here a type of judicial action not dissimilar from that referred to above in connection with the Nebraska reform school, and it is probable that the Supreme Court in the matter of apportionments was carrying out what was intended by the framers of the constitution of 1870.

The point here being dealt with, however, does not depend upon whether the state courts have been justified in implying limitations, or upon the question as to what was intended by the framers of the constitutions. The actual fact is that a narrow construction of state constitutional provisions adverse to the powers of the General Assembly has been largely occasioned by the increasing detail in state constitutions, and the further fact is equally important that this narrow interpretation has been responsible to a large extent for the still further increase in constitutional detail.

The earlier state constitutions were comparatively short, and contained little except a framework of government. Many of the later constitutions are very long and deal with a great variety of matters. The provisions of present state constitutions may for convenience be classified roughly into five groups:

- (1) Those dealing with the organization and operation of government.
- (2) Those imposing limitations upon legislative power.
- (3) Those incorporating into the constitution matters of legislation.
- (4) Those specifically granting powers to the legislature.
- (5) Those requiring that the legislature take certain action.

Enough has perhaps been said above to indicate a justification for placing in constitutions a number of provisions specifically granting

⁷ 172 Ill. 486 (1898).

power to the legislature. Such provisions have in many cases been clearly made necessary by judicial decisions, and substantially the only way to avoid such provisions is to establish some plan by which broad constitutional limitations upon the legislatures may be uniformly interpreted for the whole country.

In the first state constitutions there were practically no limitations upon legislative power except those found in the bill of rights. Partly because of dissatisfaction with actions which public sentiment forced the legislatures to take and partly because of legislative incompetence and corruption, there has been since the revolution a constantly increasing mass of limitations upon legislative action. Now such limitations form a large part of the constitutional text. In the Alabama constitution of 1901 for example, of the 287 articles, thirty-six are devoted to the declaration of rights, about thirty others to legislative procedure and related matters, and eight to a detailed enumeration of matters with respect to which local and special legislation is forbidden or strictly regulated.

In the historical outline of the development of legislative power in Illinois, appearing in the earlier part of this pamphlet, a brief discussion may be found of the development of limitations upon legislative power in this state. Difficulties with respect to legislative procedure have caused the introduction of a number of limitations such as those with respect to titles and amendment by reference.

Even more important has been the development of specific limitations upon the powers of the General Assembly itself. The three most important types of limitations in Illinois upon the actual powers of the General Assembly are those with respect to banking, state and municipal debts, and special legislation. Each of these sets of limitations has a different historical explanation and these limitations have probably without question proved effective to prevent the continuance of abuses which once existed in the state. In the 1869 session of the Illinois General Assembly, four large volumes of special legislation were enacted, and this legislation very clearly could not have received adequate attention. Such legislation was undesirable, and was effectively prevented by Article IV, Section 22 of the constitution of 1870, and by limitations found elsewhere in that constitution. There are some objections to a detailed enumeration of subjects upon which special legislation is forbidden, and it is probable that the plan adopted by Michigan in 1908 is more effective than the detailed list of prohibitions in Illinois. Under the Michigan constitution: "The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act, except acts repealing local or special acts in effect January 1, 1909, and receiving a two-thirds vote of the legislature shall take effect until approved by a majority of the electors voting thereon in the district to be affected."

The early experience of the state with respect to banking and internal improvements was one which justified the placing of a definite check upon further state activity in this field, although in recent years the state of Illinois has somewhat altered its attitude with respect to

internal improvements (through provision for a deep waterway and for a system of hard roads), and there is now a definite movement for constitutional change which may permit the state to embark upon farm loan enterprises. The experience just prior to 1870 with respect to municipal aid to railroads was also one which justified the placing of a check upon legislative and municipal authority with respect to this matter. However, in this matter also there is now a definite agitation for a change in order that municipalities may embark to a greater degree upon ownership of public utilities. It is usually true that a same type of problem does not present itself a second time. Constitutional limitations with respect to banking and internal improvements and perhaps also with respect to municipal debt were placed in the constitution after the state had probably already learned a sufficient lesson with respect to these matters, although it is clear with respect to special legislation that some constitutional check was necessary to stop abuses. However, limitations once imposed to meet abuses which have previously occurred later tend to hamper the state in things which it may desire to do, and this may be true with some of the present limitations in the constitution of Illinois.

Attention should also be called to the fact that there has since 1870 been a much greater application by the courts of broad limitations upon the legislative power. Before 1870, "due process of law" as a limitation upon state legislative power had hardly developed, and the series of decisions holding statutes unconstitutional as violations of "due process of law" or as conferring special privileges, immunities or franchises by special law, present to the constitutional convention of 1920 a problem which did not exist when the present constitution was framed. These broad guarantees, as construed by the highest courts of the states, have been to a large extent responsible for the introduction into state constitutions of numerous specific grants of authority to the legislatures.

Enough has probably been said above to indicate the reasons for the numerous provisions in state constitutions which expressly grant powers to the legislatures. Similar reasons in some cases account for the placing of legislation in the constitution itself. For example, when the highest state court has declared unconstitutional a statute limiting labor on public works to eight hours a day (as was done in New York, Colorado and Ohio), the people may put into the constitution an authorization for such legislation, but they may with equal brevity put the legislative provision into the constitution itself. However, provisions of this detailed character once put into the constitution are at once themselves construed as limitations upon legislative power, whether the constitution itself legislates as to the matter or whether it grants to the legislature a power to legislate. Unfortunately, many of the provisions in state constitutions which are really legislative in character and many of the provisions expressly granting authority to the legislature may be justified in view of what has

already been said. It has been suggested above that state constitutions now contain a good many provisions either specifically granting power to the legislature or requiring that the legislature take certain action. A command to the legislature and an authorization for legislative action have the same legal effect, because of the fact that there is no way of compelling affirmative legislative action. Commands to the legislature and grants to the legislature have both in many cases found their way into the constitutions for the purpose of enlarging legislative power, although it should again be emphasized that when they are once placed in the constitution they almost certainly come by interpretation to be also limitations upon that power.

A state constitution is largely an accumulation of provisions which have been introduced at various times. Constitutional limitations once adopted tend to persist and are joined by other provisions to meet new situations. A provision is not apt to be removed unless it occasions difficulties which seem to make such removal necessary. The provisions of Sections 29, 30 and 31 of Article IV of the constitution of 1870 have already been referred to as either commands or grants of power to the legislature. Section 32 of the same article belongs in this class. There are detailed provisions in the constitution of Illinois with respect to railroads (Article XI., Sections 9 to 15) and with respect to warehouses (Article XIII). These constitutional provisions are in reality legislation, although they also contain expressions as to what the General Assembly shall do. On the whole these provisions have been outgrown, and are useless, although they have as yet made little difficulty. The case of *Hannah v. People*,⁸ suggests the possibility, however, that these legislative provisions in the constitution may at some time come to be hindrances to a more progressive legislative policy than was actually thought necessary in 1870. The constitutional provisions introduced in 1870 as to railroads and warehouses have long ceased to be necessary, because the matters recognized as needed in 1870 have for a number of years come to be generally recognized as constitutionally proper, irrespective of constitutional provisions, and much further developments have taken place.

The issue presents itself to the constitutional convention of 1920 as to the type of constitution it shall frame. There are two alternatives in this respect:

(1) The state may continue in the path of providing a detailed constitution which shall itself prescribe a good deal in the way of state legislative policy, or

(2) The state may return to a brief constitution containing only matters of fundamental importance, seeking at the same time to lay down principles in such a way that they will not be construed as unduly restricting legislative power.

If the first plan is adopted of having a detailed constitution, itself embodying a good deal with respect to legislative policy,

⁸ 198 Ill. 77 (1902).

attention should be called to the necessity of a simple amending process. Placing a mass of legislative detail into the constitution substantially does away with the distinction in content between the constitution and statutes, and makes necessary to a large extent the doing away at the same time with the distinction in method of enactment of the two types of provisions. If a complex and detailed constitution is to be framed, some attention should also be paid to the effort to prevent the drawing of limitations by implication from provisions which are not intended primarily as limitations. The Illinois constitution of 1870 contains such a provision with respect to revenue by prescribing that "the specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed by this constitution."⁹ A provision in the Oklahoma constitution which seeks to avoid the drawing of implied limitations from provisions not intended as limitations declares that "the authority of the legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in this constitution upon any subject whatsoever shall not work a restriction, limitation or exclusion of such authority upon the same or any other subject or subjects whatsoever."

The thing sought to be emphasized in this discussion of legislative powers is that state constitutions have come to a very great extent to perform functions not accounted for by the theory still prevalent as to the function of state constitutions or as to the powers of state legislative bodies. If details are to be placed in state constitutions which are not intended primarily as limitations upon the legislature, this fact should be taken into account and the constitution so phrased that the courts will not draw limitations from such provisions by implication. What may be termed implied limitations came into the judicial history of this country with the development of complex constitutions, and the principle of implied limitations is well established in the judicial decisions of this and other states. If a complex and detailed constitution is desired, and it is desired at the same time to place in it provisions which are not intended as limitations, some language must be employed to rebut the present judicial presumption that such provisions are to be construed as limitations. It should be borne in mind that it is impossible to frame a detailed and complex constitution and at the same time adhere to the theory that a state constitution is a document containing matters only of fundamental and permanent importance, and that the legislature possesses all powers not clearly and intentionally denied by the text of such a constitution. With a complex constitution it is necessary to make some adjustments in the theory as to the amount of power conferred upon the legislature and also with respect to the method of constitutional change.

⁹ See *Price v. People*, 193 Ill. 114 (1901).

If on the other hand, a simple constitution is to be adopted containing matters only of fundamental importance, or matters which are today regarded as of fundamental importance, it may be possible to return to the older legal theory that a constitution is to be construed favorably to state legislative power and that a state legislature has all powers not clearly denied. But the mere framing of a simple constitution may not accomplish this purpose if broad provisions in such a constitution continue to be construed so as to prevent legislation which the people of the state may desire.

X. ANALYSIS OF PRESENT LEGISLATIVE ORGANIZATION AND WORK.

A state legislature is essentially the affirmative organ of the state government for the development of new policies, or for the establishment of new principles. The executive has little or no authority to establish new policies, and the courts have less power to do so. The legislature, as the organ of the state government for affirmative action, should of course be so organized that it may operate effectively for this purpose.

During certain periods in the development of English law, legislative action was perhaps the most decisive influence in the development of the principles of private law. However, on the whole, the English legal system has in its main lines developed as a result of judicial action, and the legislature has normally limited itself to the meeting of new problems which could not be satisfactorily handled by the courts, or to the problem of restating in statutory form the results of judicial action. Occasionally important acts, such as the negotiable instruments act, the uniform sales act, and the uniform partnership act, are enacted by the General Assembly summing up and seeking to codify the existing law, with such changes as may seem desirable. Such an effort at legislative restatement of the whole law upon a particular subject is not frequent; and within the field of private law a session of the Illinois General Assembly ordinarily deals with only a small number of problems in which some specific difficulty may have presented itself.

The work of the Illinois General Assembly may, therefore, be said not to relate primarily to the development of rules for the regulation of relations between private individuals. Sir Courtney Ilbert remarked some time ago of the English Parliament that not one-tenth of the work of a session related to matters of private rights, and that the remainder related to matters primarily administrative in character. The same statement may be made regarding the work of the Illinois General Assembly. The great mass of its work relates to matters other than those which have to do with the relations between private individuals. Of course, the appropriations for the support of the state government and legislation regarding the administrative functions of the state and of the local subdivisions of the state are equally as important to the citizen as is legislation regulating the private rights of one citizen as against another. However, legislation which is primarily administrative in character involves problems of a distinctly different sort from that with respect to matters of private right.

An analysis of the legislative work of the General Assembly of Illinois in 1917 and 1919 indicates that of the 338 laws enacted by the General Assembly at its regular session in 1917, only seventeen can be classed as regulating primarily the private rights of parties among themselves. Of the 429 laws enacted at the regular session of the Illinois General Assembly in 1919 only fourteen belong to this class. A table is given below indicating in a rough fashion the types of matters dealt with by legislation in Illinois at these two sessions:

	1917	1919
State appropriations	63	67
Laws relating to state administrative matters.....	150	177
Laws relating to local administrative matters.....	108	171
Laws relating to purely private rights.....	17	14

Acts containing new substantive matter of legislation and merely containing appropriations incident thereto are not classified as appropriation acts. It is difficult to make a distinction between state and local administrative matters, and doubts have been resolved in favor of classification as local matters. The numerous acts readjusting local tax rates in 1919 are responsible for the large proportion of laws for that year classified as relating to local administrative matters.

This table probably indicates with sufficient clearness that the problems of legislation are primarily problems connected with the operation of state and local governments, and not problems having to do primarily with the rights of private individuals among themselves. In the case of state appropriations and of substantially all legislation regarding state administration, the information upon which legislation is to be based must be obtained primarily from the existing executive governmental agencies of the state, and with a better organization of the executive government the information for such legislation will be much more easily available than at the present time.

For matters relating to local administration, information again must to a great extent come from the state executive offices which have a general supervision over the different functions of local government. For example, with respect to schools and with respect to local charitable administration, a good deal of the impulse for legislation may come from the local communities, but this centers largely upon the state executive offices having supervision over these matters. Comment is made later in this discussion upon the fact that there is no constitutionally recognized relationship between the General Assembly and the executive department with respect to the enactment of legislation, although perhaps fully nine-tenths of the work of the General Assembly at each of its sessions must be devoted to legislation or proposed legislation having to do with the administration of government.

The chief problems of legislation coming before the General Assembly are problems of a technical character, requiring information regarding the actual operation of government and regarding the operation of similar institutions elsewhere. Legislation is a technical expert task and in the states of this country it is performed by a body, the length of whose session is in most cases narrowly limited. In Illinois where there is no constitutional limit, the General Assembly meets for

five or six months in each two years, and the members during that five or six months' period return home ordinarily at the end of each week.

The executive veto operates as a purely negative check, and even as a negative check is exercised in the main in such a manner that defects in proposed legislation detected by the governor cannot be corrected by the General Assembly. As has already been suggested, substantially all bills come to the governor at the end of the session, and his action upon these bills is reported to the legislative bodies which have met merely in a formal manner and ordinarily without a quorum.

The whole development in the states of this country has been that of throwing limitations around the performance of legislative function, and of reducing the periods within which the legislature may act. Attention has already been called to the fact that annual sessions of legislatures have almost ceased in this country and also to the fact that legislative sessions are in most states limited to a fairly brief period. No limitations upon the legislative session exist in Illinois, and normally the General Assembly sits from January until close to the first of July, taking a recess a sufficient time before that date for the governor to act upon bills, and for laws to come into effect on the first of July, as now required by the constitution. Legislative bodies have not only been restricted in the frequency and length of their sessions, but their power has also been limited in this and other states by the development of the executive veto. The function of legislation is the affirmative task of laying down new policies, and the executive veto has come to be primarily a negative check.

Detailed limitations as to its procedure and as to the things which it may do have been placed around the legislature in such a manner that pitfalls exist in substantially every direction. Even the most carefully drafted legislation may have overlooked some one of the pitfalls which has been planned by the constitution, and even if such pitfalls have all been carefully avoided there is great danger of violating some constitutional provision as to procedure in the numerous steps of its cumbersome legislative process through which every bill must pass before it becomes law. Legislation has therefore become a hazardous occupation.

Distrust of legislatures developed very early after the independence of this country, and that distrust has led to a hampering of the legislative function in so many respects that effective and valid legislation has become an extremely difficult thing. Little has been done as yet in this country toward the working out of plans by which the General Assembly may be made a responsible legislative body for the affirmative enactment of state policies. Substantially all of the development has been toward limiting and restricting the General Assembly's power for evil, upon the apparent assumption that a legislative body is merely a necessary evil. Naturally little has been accomplished under this theory in the bettering of legislative organization.

The legislative body under the constitution of Illinois is and can be in no sense a body of lawmaking experts. Members of the General Assembly are elected from all walks of life for the purpose of giving ordinarily not over six months out of each two years of their time to

the business of legislation. They may well represent under the plans now in existence the sentiment of the community with respect to broad matters of public policy, but such broad matters are rather infrequent as compared with the more detailed and more technical matters which must be dealt with by legislation.

XI. CONCLUSIONS.

The principle of the separation of powers is formally embodied in the constitution of Illinois, but is expressly subject to all of the exceptions made in the text of the constitution itself. This principle was announced in the constitution of 1818, but the constitution of that year did little toward establishing the principle in practice. From 1818 to 1848, the legislative department was predominant and largely controlled the executive and judicial departments. Such a predominance of the legislative department characterized all state governments after the declaration of independence, and independent spheres of executive and judicial departments gradually became established in the fifty years following 1776. The increased power of the executive and judicial departments has come about primarily through the vesting in these departments of power at first regarded as legislative.

In a discussion earlier in this pamphlet upon the relations of the General Assembly with other departments of the state government, attention has been called to the express constitutional provisions bearing upon relationships with other departments. A number of exceptions have already been made to the principle of the separation of powers and perhaps the greatest exception to this principle in actual operation is that as to the relationship between the governor and the two houses of the General Assembly, when the executive and legislative branches of the state government are in accord. Much the greater part of legislative business bears upon the operation of government and it is essential that the executive and the legislative departments should work in close harmony upon these problems, for the executive is not only the body which will know most about the operation of existing laws (which it is itself administering) but it is also the body which will administer or supervise the administration of all new administrative legislation. It is essential that the General Assembly obtain from the executive department a large mass of information upon which new legislation may be based, and when the governor and the two houses of the General Assembly are in accord it is also natural that the governor as the head of the executive department should have a large influence with the legislative department in the final determination as to what legislation shall be enacted. Such an affirmative relationship between the governor and the General Assembly is now recognized by Article V, Section 7 of the constitution. The governor is required to give the General Assembly information as to the condition of the state and to recommend such measures as he shall deem expedient.

The theory that the governor and the legislature must be absolutely distinct and must operate in more or less separate and watertight compartments, carefully refraining from relationship with each

other, is absolutely unworkable; and such a theory has never been a necessary conclusion from the principle of the separation of powers; nor has it ever been an actuality except in cases where through disagreement between the two departments, the state government was working inefficiently.

There has been in recent years a very definite tendency to recognize in the governor a more positive share in the actual making of legislation. A vigorous man in the office of governor always exercises a large influence in legislation, and the state is better off for such exercise. Bills sponsored by the governor ordinarily obtain precedence in the two houses. Not only this, but the legislative body is more effective under such conditions and is better able to perform the functions for which it has been established.

The veto power, it has already been suggested, is primarily a negative function exercised at the end of a legislative session, when any suggestions which the governor may have for the improvement of legislation cannot be availed of. Constitutional provisions in Alabama and Virginia and a recent constitutional provision in Massachusetts regarding the governor's recommendations upon bills presented to him after passage by the two houses, indicate a step in the direction of giving the governor a larger affirmative share in legislation; but the governor cannot exercise an affirmative share in legislation by passing upon bills submitted to him, if the bills come to him at the end of the legislative session, so that he has merely an alternative of approving bill or of vetoing it, without there being a possibility of improving it in co-operation with the General Assembly. The budget provisions in Maryland and Massachusetts also reflect a growing tendency to increase the affirmative share of the governor in legislation, and here this affirmative share in legislation comes through the recommendation of a detailed budget. In Maryland the governor's budget is preserved through a prohibition of legislative increase in its items (a prohibition similar to that established by rules in the British House of Commons). In Massachusetts the governor's control is established by permitting the general court to increase items in the budget, but by granting to the governor at the same time an authority to reduce items or veto parts of items, so that he may, if the general court has increased his recommendations of appropriations, reduce them to the amounts of his original recommendation.

However, little has on the whole been done in this country toward bringing about an effective co-operation between the executive department and the legislative department in matters of legislation. It may be desirable to repeat here that the need for a constitutional recognition of such closer relationship depends upon two things:

(1) The fact that the bulk of work to be performed by a legislative body has a direct bearing upon the work being done by the executive body.

(2) The further fact that the legislative body now is and is likely to remain a body not in constant session, but meeting only for several months in each legislative period. A body assembled as is the general assembly of Illinois has no opportunity when once it has come into

session to accumulate all of the data necessary for effective legislation. Such accumulation of data and preparation of information must come in advance of the legislative session. The general assembly meets on an average of about three days each week for some six months during each twenty-four months, and the members in general find it necessary to continue their private businesses to some extent even during the sessions. To expect from a body of this type, no matter how able, honest and hardworking the members of such a body may be, a high grade performance upon a great number of technical measures is futile, unless the executive as the permanent organ of the state government has some machinery for bringing these matters effectively to the attention of the legislative body. By the constitution of 1870, an effort was made to draw the courts in as an aid to legislation, by requiring them to report defects in the laws, but this plan has not worked.

The separation of the legislative and executive functions is now accentuated by the provisions in Sections 3 and 15 of Article IV of the constitution, preventing any person elected to the general assembly from receiving any civil appointment in this state during the term for which he shall have been elected, and forbidding any person holding a lucrative office under the United States or this state from having a seat in the general assembly. These provisions do not prevent the giving of political rewards to legislative leaders. If the party in control of the state government is also in control of the national government, appointments to office are oftentimes made to national positions of those who under this constitutional provision would be disqualified from holding state positions. These constitutional provisions do not as a matter of fact prevent the objectionable practice at which they were aimed, but they do often result in taking persons having some information about state government out of the service of state government and into the service of national or local government.

Attention has already been called to the difficulties in the operation of our government when the executive belongs to a political party which does not at the same time control the two houses of the legislative department. This lack of political harmony between the executive and the legislative departments has been quite evident in the national government during a good part of the time since the civil war. In the national government at least there is a tendency for the party in the minority in a presidential election to control the federal house of representatives in the intervening election between presidential years.

In the Illinois general assembly cases of purely partisan alignment upon legislation are not frequent. Upon the bulk of important legislation no party lines are drawn, and in the past at least the issue between "wet" and "dry" has been much more important than that between democrat and republican. However, it should not be inferred from this statement that it is therefore immaterial as to whether the governor and the two houses of the general assembly are in political accord. Although party alignments are infrequent, the control of the two departments of the government by different parties makes a great deal of confusion and friction. Attention may

also be called to the fact that, for political reasons, the governor has greater influence with the general assembly meeting when his term begins than with the one meeting in the middle of his term, even though in both cases there is political accord between the governor and the majorities of the two houses.

The English parliamentary system, which has been adopted very widely throughout the world has a distinct advantage in that it keeps a constant political harmony between the legislative and the executive departments. Under the parliamentary system as it operates in England, and in most of the countries which have copied from England, the executive part of the government is controlled by a cabinet whose members are of the same party as that which controls the more popular branch of the legislature, the members of the cabinet resigning or forcing a new popular election when they cease to be in harmony with the legislative body. In this manner the legislative body is always able to force a change of cabinets or at least an appeal to the electorate to determine whether the existing cabinet and the party it represents should remain in power. Either by the resignation of the cabinet or by its success or failure in the general election, political harmony between the legislature and the executive is restored almost immediately after it has once ceased to exist. The English parliamentary system almost necessarily, however, requires either a single-chambered legislature or a legislative organization in which one house has the dominant political control.

In this country the system of separate executive and legislative organizations works best when the executive and legislature are not only in political harmony but when the personnel of the two departments is such that effective co-operation may be had. When there is not political harmony, or when there is not full co-operation, even if there is apparent political harmony, the governmental organization in this country works badly or almost not at all. That is, the theory (although somewhat modified by express constitutional provisions) implies a rather distinct separation of departments; but the system based upon this theory works well only when such separation is in fact largely broken down and when a close co-operation is established through extra-constitutional means.

Assuming political harmony to exist at any time between the two departments in a given state, the co-operation of the two departments is of course rendered more effective if the legislative leaders are not changing at frequent intervals. Under our cumbersome system of legislative organization, it normally requires several sessions for a man to develop a close familiarity with the details of governmental problems. The senate in this state is so organized under the constitution that substantially one-half of the members are elected each two years, so that at least one-half of the members have always had previous legislative experience. Of course it is also true that members of the state senate are often re-elected or that members of the house are elected to the state senate, so that continuous legislative service in the senate is increased in this way beyond that required by the constitution. In the session of 1917, of the twenty-five newly elected

members of the senate, five had seen service in the immediately preceding session of the house of representatives, and nine had previously been in the state senate. In the session of 1919, of the twenty-six newly elected members of the senate, nineteen had had legislative service immediately preceding their election.

No constitutional provision requires continuity of service in the house of representatives, although by election a fair degree of continuity is maintained. In the Fiftieth General Assembly (1917), of the 153 members, 90 had served in the next preceding session either of the senate or of the house of representatives. In 1919, of the 153 members of the house of representatives, 97 had served in the next preceding session either of the senate or of the house of representatives.

A member by frequent re-elections to the house or senate acquires a degree of expertness in legislative matters, and some continuity of membership through re-election is almost necessary to the working of the present cumbersome machinery of legislation. A house of representatives composed entirely of persons without previous legislative experience would be almost helpless, however high the ability of its members may be.

Anyone who has had to deal with the legislative organization of Illinois or of any other state must be impressed by the cumbersomeness of the present legislative machinery. Skill and persistence are required to take a piece of proposed legislation through all stages in each house and finally through the process of executive approval. No plans have been worked out by the constitution or through legislative procedure for the careful co-ordination of the work of the two houses. The citizen without legislative experience ordinarily finds himself lost when he comes for the first time in contact with this highly cumbersome procedure. The theory upon which this procedure and the limitations upon the legislature have been built up is apparently that the legislature must be practically prevented from doing anything in order that it may be prevented from doing wrong things, and such a plan is practically certain to lead to undesirable consequences.

The process of legislation has two distinct aspects: (1) The expert, (2) The popular. Any legislative organization should be of such a character as to reflect upon matters of legislation the needs and the views of the people of the state. It must also be borne in mind, however, that the technical aspect of legislation is no less important, and that a large part of business to be acted upon by a legislature has to do with matters upon which the public may have very little opinion either way. Even upon matters with respect to which the public has positive views, the technical element is important and care upon the technical side of legislation is essential if the people are finally through legislation to get what they desire. This balancing of the technical and the popular aspects of legislation presents the most serious problem with respect to the matter now under consideration, and the problem is one which has not been dealt with to any extent as yet in this country. From the standpoint of the expression

of popular opinion and the accumulation of popular views there is of course a distinct value in having a large popular body meet occasionally as is now the case with the Illinois General Assembly. Small bodies of technical experts holding office permanently or for long terms are not likely to be proper representatives of the popular views and the popular needs.

The functions to be accomplished by a legislative organization are: (1) Satisfactory positive action in accord with the views of the people of the state, and (2) technical correctness in the legislation enacted in accord with popular views and, also in the enactment of the numerous measures needed for the proper conduct of administrative matters with respect to which the public at large will normally have no decided opinion one way or the other.

This combination of the temporary popular element in legislation with the permanent technical element in legislation may be worked out in several different ways:

(a) The permanent skilled element may be organized in the executive, which has necessarily a permanent, continuous organization, leaving the legislature with an organization more or less like that now in existence for the expression of the popular view upon matters presented by the executive, and also for the enactment into legislation of matters demanded by public sentiment but not proposed by the executive.

(b) There might be a permanent technical legislature such as that suggested in a quotation earlier in this pamphlet from a message to the Kansas legislature by Governor Hodges. Clearly, however, a small permanent body composed of technical experts would not be adequate as a means of reflecting the popular needs and desires in legislation, and if there were a small and permanent technical body such as Governor Hodges suggested, much of the work of such a body would have to be submitted either to a larger and more representative legislative body or to a referendum of the people.

(c) It may be possible to establish a permanent expert staff subject to the general assembly or to a combination of executive and legislative control, this permanent expert staff drawing up the measures suggested by the administrative bodies of the state and local government or by members of the legislature and submitting these measures to the legislature meeting very much as at present. The legislative reference bureau is an approach to what is here suggested, although the chief function of the legislative reference bureau has been that of drafting bills desired by members of the General Assembly, after they have come into session; and there has not as yet been any effective way of preparing in advance of the legislative session the matters which it may be desired to submit to the General Assembly.

XII. MORE DETAILED PROBLEMS IN ILLINOIS.

When once a legislative organization has been established, and has become a part of the governmental organization of the state the possibility of changing it in any radical way is not very great, although there should be some possibility of making adjustments as to some of the problems which make greatest difficulty in Illinois today.

The more detailed problems, however, bearing upon the operation of the present legislative machinery are much more apt to receive favorable consideration, and a brief review should be made of these problems, and also of the possible problems which may present themselves if the initiative and referendum are adopted as instruments of legislation in this state.

Cumulative voting system. The cumulative voting system is one which has for some time been under attack in this state and probably a good deal of time in the constitutional convention will have to be devoted to this problem. As has been suggested earlier in this pamphlet, the alternatives to the plan of cumulative voting are a return to the majority system or an advance beyond cumulative voting to a more proportional system of representation. However, it is likely that in the movement for the abolition of cumulative voting; the chief effort will be made to return to a plan of majority voting. As has already been suggested, if the state returns to majority voting, there is a distinct advantage in retaining the plan of having but one series of legislative districts, using the senatorial district as a basis for electing representatives, as at present. If a complete new series of districts is to be created for the election of members of the house of representatives, care should at least be taken to see that such districts do not cross the lines of the larger senatorial districts.

Limitation of representation. The problem of limiting the representation of Chicago and Cook County will present itself, and with this problem will also be presented the question of a greater degree of municipal home rule not only for Chicago but for other cities in the state as well. The subject of limited representation has already been fully discussed elsewhere in this

pamphlet, and in this summing up of the matter attention should be again called to the fact that some modification will necessarily be made in the cumulative system if Chicago or Cook County is to be represented in one house upon a different basis from that in the other house. The cumulative system could still be applied under such an arrangement, but the application of the cumulative or any other system will require two more or less independent series of legislative districts if the representation of a large area of the state is to be upon a different basis in the two houses.

Initiative and Referendum. Bulletin No. 2 in this series discusses fully the initiative and referendum and analyzes in detail the constitutional provisions of the states which have adopted these institutions. It is unnecessary to repeat that matter here, but attention should be called to the fact that the adoption of the initiative and referendum will set up a new and additional type of legislative machinery. Of course, if the indirect initiative is adopted, the machinery of popular legislation will be closely related to the present representative organization; and if the referendum is adopted merely as a means of repealing, rather than of suspending, laws, the problems of relationship between the two types of legislative machinery will be much simplified. The initiative and referendum have not to any large extent replaced the representative legislative machinery even in the states where they have been used most frequently, but there are tendencies in some of the constitutional provisions in other states toward forcing an increased use of the initiative and referendum, through placing limitations upon the amendment or repeal by the regular representative legislative body of acts adopted or approved by popular vote. If the initiative and referendum are adopted, care must be taken to see that proper relationships are established between the two methods then existing for the enactment of legislation.

Relation of legislative power to the constitution. In Bulletin No. 3 of this series a full discussion will be found of the relationship of legislative action to the amendment of the constitution. It is there said that a constitutional convention is a cumbersome piece of governmental machinery, properly to be used only at long intervals and in case material changes in a constitution are desired. The machinery for legislative proposal of amendment (to which may be added an initiative proposal if the initiative is adopted) should be employed when less fundamental changes are desired. The process of specific amendment has been so cumbersome in Illinois under the constitution of 1870 that it has not served its proper purpose as a means of making less fundamental and less material changes. The proposal of specific amendments

is much simpler and cheaper than is the assembling of a convention, and even though a constitution is limited to things now regarded as fundamental and permanent, it is likely that the views of the present day as to these matters may change before a new constitution is framed for this state, so that a relatively simple amending process will be necessary even though the constitution may be now regarded as framed in such a manner that it will need infrequent change.

The most important problem as to the relationship between the legislature and the constitution is that of legislative powers. A detailed and complex constitution will of course limit the powers of the general assembly to a very great extent, and will probably require frequent alteration. A simple constitution which seeks to deal merely with fundamentals will leave the general assembly a wider power and will require less frequent amendment. Of course, as has already been suggested, a simple type of constitution containing only fundamentals but containing also broad constitutional guarantees, which have already been strictly construed, may prevent the enactment of legislation which is desired. A further discussion of the whole problem of the construction of broad constitutional guarantees will be found in the pamphlet on the judicial department. It seems desirable to return if possible to a simple constitution and to a simpler legislative machinery, less hedged about by all sorts of limitations. It also seems desirable to bring, if possible, a closer relationship between the executive and the legislative departments in legislation, and through such a closer co-ordination to make more effective the permanent and technical aspects of legislation. If these matters are properly handled, there seems no necessity for adhering to the method now employed in the states of this country of hedging about legislative bodies, and of making the actual enactment of legislation a hazardous task.

Amendment by reference. Consideration has already been given to the problem of amendment by reference in this state. A more detailed discussion of this matter will be found in the pamphlet entitled "Constitutional Conventions in Illinois" and a detailed statement of the results of cases will be found in the Annotated Constitution. The present situation in this state with respect to amendment of prior laws by reference is one which increases very materially the hazards of legislation, without any real gain, and some change should be made in this respect.

Other procedural problems. A discussion appears earlier in this pamphlet of the problem of three readings of each bill at large in the house, and of the problem presented by the constitutional provision as to time when laws shall take effect. Perhaps it may be desirable also that the convention devote some attention to the matter of printing bills with all amendments thereto before final passage. The require-

ment as to printing is one with respect to which the supreme court took a very strict view, but this view has been somewhat modified and the difficulty which arose with respect to the holding of legislation unconstitutional because of failure to make journal entries of printing has now largely been met by making of formal entries upon the journals with respect to this matter in all cases.

APPENDIX NO. 1. REFERENCES.

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- Bulletin No. 9. Biennial elections and legislative sessions.
- Bulletin No. 27. Preferential voting.
- Bulletin No. 28. Proportional representation.
- Bulletin No. 29. The basis of the apportionment of representation in the several states.
- Bulletin No. 34. Special legislation.

APPENDIX NO. 2. CONSTITUTION OF ILLINOIS, ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both to be elected by the people.

ELECTION.

§ 2. An election for members of the General Assembly shall be held on the Tuesday next after the first Monday in November, in the year of our Lord one thousand eight hundred and seventy, and every two years thereafter, in each county, at such places therein as may be provided by law. When vacancies occur in either house, the Governor, or person exercising the powers of Governor, shall issue writs of election to fill such vacancies.

ELIGIBILITY AND OATH.

§ 3. No person shall be a Senator who shall not have attained the age of twenty-five years, or a Representative who shall not have attained the age of twenty-one years. No person shall be a Senator or a Representative who shall not be a citizen of the United States, and who shall not have been for five years a resident of this State, and for two years next preceding his election a resident within the territory forming the district from which he is elected. No judge or clerk of any court, Secretary of State, Attorney General, State's Attorney, recorder, sheriff, or collector of public revenue, member of either House of Congress, or person holding any lucrative office under the United States or this State, or any foreign government, shall have a seat in the General Assembly: *Provided*, that appointments in the militia, and the offices of notary public and justice of the peace, shall not be considered lucrative. Nor shall any person holding any office of honor or profit under any foreign government, or under the government of the United States, (except postmasters whose annual compensation does not exceed the sum of three hundred dollars) hold any office of honor or profit under the authority of this State.

§ 4. No person who has been, or hereafter shall be, convicted of bribery, perjury or other infamous crime, nor any person who has been or may be a collector or holder of public moneys, who shall not have accounted for and paid over, according to law, all such moneys due from him, shall be eligible to the General Assembly, or to any office of profit or trust in this State.

§ 5. Members of the General Assembly, before they enter upon their official duties, shall take and subscribe the following oath or af-

firmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Illinois, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and that I have not, knowingly or intentionally, paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office, and have not accepted, nor will I accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act." This oath shall be administered by a judge of the supreme or circuit court in the hall of the house to which the member is elected, and the Secretary of State shall record and file the oath subscribed by each member. Any member who shall refuse to take the oath herein prescribed shall forfeit his office, and every member who shall be convicted of having sworn falsely to or of violating his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this State.

APPORTIONMENT—SENATORIAL.

§ 6. The General Assembly shall apportion the State every ten years, beginning with the year one thousand eight hundred and seventy-one, by dividing the population of the State, as ascertained by the Federal census, by the number fifty-one, and the quotient shall be the ratio of representation in the senate. The State shall be divided into fifty-one senatorial districts, each of which shall elect one senator, whose term of office shall be four years. The Senators elected in the year of our Lord one thousand eight hundred and seventy-two, in districts bearing odd numbers, shall vacate their offices at the end of two years, and those elected in districts bearing even numbers, at the end of four years; and vacancies occurring by the expiration of term shall be filled by the election of senators for the full term. Senatorial districts shall be formed of contiguous and compact territory, bounded by county lines, and contain as nearly as practicable an equal number of inhabitants; but no district shall contain less than four-fifths of the senatorial ratio. Counties containing not less than the ratio and three-fourths, may be divided into separate districts, and shall be entitled to two Senators, and to one additional senator for each number of inhabitants equal to the ratio, contained by such counties in excess of twice the number of said ratio.

MINORITY REPRESENTATION.

§ 7 and 8. The House of Representatives shall consist of three times the number of the members of the Senate, and the term of office shall be two years. Three representatives shall be elected in each Senatorial district at the general election in the year of our Lord one thousand eight hundred and seventy-two, and every two years thereafter. In all elections of representatives aforesaid, each qualified voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same, or equal parts

thereof, among the candidates, as he shall see fit; and the candidates highest in votes shall be declared elected.²

TIME OF MEETING AND GENERAL RULES.

§ 9. The sessions of the General Assembly shall commence at twelve o'clock noon, on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof, and at no other time, unless as provided by this Constitution. A majority of the members elected to each house shall constitute a quorum. Each house shall determine the rules of its proceedings, and be the judge of the election, returns and qualifications of its members; shall choose its own officers; and the Senate shall choose a temporary President to preside when the Lieutenant Governor shall not attend as President or shall act as governor. The Secretary of State shall call the House of Representatives to order at the opening of each new Assembly, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat. No member shall be expelled by either house, except by a vote of two-thirds of all the members elected to that house, and no member be twice expelled for the same offense. Each house may punish by imprisonment any person not a member, who shall be guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. But no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

§ 10. The doors of each house and of committees of the whole shall be kept open, except in such cases as, in the opinion of the house require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days or to any other place than that in which the two houses shall be sitting. Each house shall keep a journal

² Under the terms of section 12 of the schedule, original sections 7 and 8 of this article were to be eliminated if the section relating to minority representation, which was submitted to a separate vote, was adopted by the voters. The separate section was adopted and accordingly replaced original sections 7 and 8, which were as follows:

Section 7. The population of the State, as ascertained by the Federal census, shall be divided by the number one hundred and fifty-three, and the quotient shall be the ratio of representation in the House of Representatives. Every county or district shall be entitled to one representative, when its population is three-fifths of the ratio; if any county has less than three-fifths of the ratio, it shall be attached to the adjoining county having the least population, to which no other county has for the same reason been attached, and the two shall constitute a separate district. Every county or district having a population not less than the ratio and three-fifths, shall be entitled to two representatives, and for each additional number of inhabitants, equal to the ratio, one representative. Counties having over two hundred thousand inhabitants may be divided into districts, each entitled to not less than three nor more than five representatives. After the year one thousand eight hundred and eighty, the whole population shall be divided by the number one hundred and fifty-nine, and the quotient shall be the ratio of representation in the House of Representatives for the ensuing ten years, and six additional representatives shall be added for every five hundred thousand increase of population at each decennial census thereafter, and be apportioned in the same manner as above provided.

Section 8. When a county or district shall have a fraction of population above what shall entitle it to one representative, or more, according to the provisions of the foregoing section, amounting to one-fifth of the ratio, it shall be entitled to one additional representative in the fifth term of each decennial period; when such fraction is two-fifths of the ratio, it shall be entitled to an additional representative in the fourth and fifth terms of said periods; when the fraction is three-fifths of the ratio, it shall be entitled to an additional representative in the first, second and third terms, respectively; when the fraction is four-fifths of the ratio, it shall be entitled to an additional representative in the first, second, third and fourth terms, respectively.

of its proceedings, which shall be published. In the Senate at the request of two members, and in the House at the request of five members, the yeas and nays shall be taken on any question, and entered upon the journal. Any two members of either house shall have liberty to dissent from and protest, in respectful language, against any act or resolution which they think injurious to the public or to any individual, and have the reasons of their dissent entered upon the journals.

STYLE OF LAWS AND PASSAGE OF BILLS.

§ 11. The style of the laws of this State shall be: "*Be it enacted by the People of the State of Illinois, represented in the General Assembly.*"

§ 12. Bills may originate in either house, but may be altered, amended or rejected by the other; and on the final passage of all bills, the vote shall be by yeas and nays, upon each bill separately, and shall be entered upon the journal, and no bill shall become a law without the concurrence of a majority of the members elected to each house.

§ 13. Every bill shall be read at large on three different days, in each house; and the bill and all amendments thereto shall be printed before the vote is taken on its final passage; and every bill, having passed both houses, shall be signed by the Speakers thereof. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed; and no law shall be revived or amended by reference to its title only, but the law revived, or the section amended shall be inserted at length in the new act. And no act of the General Assembly shall take effect until the first day of July next after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct.

PRIVILEGES AND DISABILITIES.

§ 14. Senators and representatives shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

§ 15. No person elected to the General Assembly shall receive any civil appointment within this State from the Governor, the Governor and Senate, or from the General Assembly, during the term for which he shall have been elected; and all such appointments and all votes given for any such members for any such office or appointment, shall be void; nor shall any member of the General Assembly be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration thereof.

[See article IV, section 25.]

PUBLIC MONEYS AND APPROPRIATIONS.

§ 16. The General Assembly shall make no appropriation of money out of the treasury in any private law. Bills making appropriations for the pay of members and officers of the General Assembly, and for the salaries of the officers of the government, shall contain no provision on any other subject.

§ 17. No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the Auditor thereon; and no money shall be diverted from any appropriation made for any purpose, or taken from any fund whatever, either by joint or separate resolution. The Auditor shall, within sixty days after the adjournment of each session of the General Assembly, prepare and publish a full statement of all money expended at such session, specifying the amount of each item, and to whom and for what paid.

§ 18. Each General Assembly shall provide for all the appropriations necessary for the ordinary and contingent expenses of the government until the expiration of the first fiscal quarter after the adjournment of the next regular session, the aggregate amount of which shall not be increased without a vote of two-thirds of the members elected to each house, nor exceed the amount of revenue authorized by law to be raised in such time; and all appropriations, general or special, requiring money to be paid out of the State treasury, from funds belonging to the State, shall end with such fiscal quarter: *Provided*, the State may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate two hundred and fifty thousand dollars; and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war, (for payment of which the faith of the State shall be pledged) shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the General Assembly at such election. The General Assembly shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue; which law, providing for the payment of such interest by such tax, shall be irrepealable until such debt be paid; *And, provided, further*, that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

§ 19. The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void: *Provided*, the

General Assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

§ 20. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of any public or other corporation, association or individual.

PAY OF MEMBERS.

§ 21. The members of the General Assembly shall receive for their services the sum of five dollars per day, during the first session held under this Constitution, and ten cents for each mile necessarily traveled in going to and returning from the seat of government, to be computed by the Auditor of Public Accounts; and thereafter such compensation as shall be prescribed by law, and no other allowance or emolument, directly or indirectly, for any purpose whatever; except the sum of fifty dollars per session to each member, which shall be in full for postage, stationery, newspapers, and all other incidental expenses and perquisites; but no change shall be made in the compensation of members of the General Assembly during the term for which they may have been elected. The pay and mileage allowed to each member of the General Assembly shall be certified by the Speakers of their respective houses, and entered on the journals, and published at the close of each session.

SPECIAL LEGISLATION PROHIBITED.

§ 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For—

- Granting divorces;
- Changing the names of persons or places;
- Laying out, opening, altering and working roads or highways;
- Vacating roads, town plats, streets, alleys and public grounds;
- Locating or changing county seats;
- Regulating county and township affairs;
- Regulating the practice in courts of justice;
- Regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables;
- Providing for changes of venue in civil and criminal cases;
- Incorporating cities, towns, or villages, or changing or amending the charter of any town, city or village;
- Providing for the election of members of the board of supervisors in townships, incorporated towns or cities;
- Summoning and impaneling grand or petit juries;
- Providing for the management of common schools;
- Regulating the rate of interest on money;
- The opening and conducting of any election, or designating the place of voting;
- The sale or mortgage of real estate belonging to minors or others under disability;
- The protection of game or fish;
- Chartering or licensing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Creating, increasing, or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed;

Changing the law of descent;

Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose;

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted.

§ 23. The General Assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State or to any municipal corporation therein.

IMPEACHMENT.

§ 24. The House of Representatives shall have the sole power of impeachment; but a majority of all the members elected must concur therein. All impeachments shall be tried by the Senate; and when sitting for that purpose, the Senators shall be upon oath, or affirmation to do justice according to law and evidence. When the Governor of the State is tried, the Chief Justice shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. But judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honor, profit or trust under the government of this State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

MISCELLANEOUS.

§ 25. The General Assembly shall provide, by law, that the fuel, stationery, and printing paper furnished for the use of the State; the copying, printing, binding and distributing the laws and journals, and all other printing ordered by the General Assembly shall be let by contract to the lowest responsible bidder; but the General Assembly shall fix a maximum price; and no member thereof, or other officer of the State, shall be interested, directly or indirectly, in such contract. But all such contracts shall be subject to the approval of the Governor, and if he disapproves the same there shall be a re-letting of the contract, in such manner as shall be prescribed by law.

§ 26. The State of Illinois shall never be made defendant in any court of law or equity.

§ 27. The General Assembly shall have no power to authorize lotteries or gift enterprise for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State.

§ 28. No law shall be passed which shall operate to extend the term of any public officer after his election or appointment.

§ 29. It shall be the duty of the General Assembly to pass such laws as may be necessary for the protection of operative miners, by

providing for ventilation, when the same may be required, and the construction of escapement shafts, or such other appliances as may secure safety in all coal mines, and to provide for the enforcement of said laws by such penalties and punishments as may be deemed proper.

§ 30. The General Assembly may provide for establishing and opening roads and cartways, connected with a public road, for private and public use.

§ 31. The General Assembly may pass laws permitting the owners of lands to construct drains, ditches and levees for Agricultural, Sanitary or mining purposes, across the lands of others, and provide for the organization of drainage districts, and vest the corporate authorities thereof, with power to construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State, by Special Assessments upon the property benefited thereby.³

§ 32. The General Assembly shall pass liberal Homestead and Exemption laws.

§ 33. The General Assembly shall not appropriate out of the State treasury, or expend on account of the new capitol grounds, and construction, completion, and furnishing of the State House, a sum exceeding, in the aggregate, three and a half millions of dollars, inclusive of all appropriations heretofore made, without first submitting the proposition for an additional expenditure to the legal voters of the State, at a general election; nor unless a majority of all the votes cast at such election shall be for the proposed additional expenditure.

§ 34. The General Assembly shall have power, subject to the conditions and limitations hereinafter contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such a manner as the General Assembly shall prescribe) in the aggre-

³ As amended by the first amendment to the constitution. The amendment was proposed by resolution of the General Assembly in 1877. It was ratified by the voters on November 5, 1878, and proclaimed adopted on November 29, 1878. The section as it originally appeared is as follows:

"Section 31. The General Assembly may pass laws permitting the owners or occupants of lands to construct drains and ditches, for agricultural and sanitary purposes, across the lands of others."

gate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefor shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special); and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution; and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters (voting on the question at any election, general, municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the General Assembly shall create municipal courts in the city of Chicago it may abolish the offices of justices of the peace, police magistrates and constables in and for the territory within said city, and may limit the jurisdiction of justices of the peace in the territory of said county of Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe; and the General Assembly may pass all laws which it may deem requisite to effectually provide a complete system of local municipal government in and for the city of Chicago.

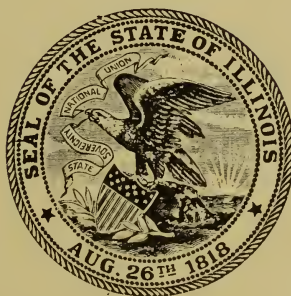
No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect section four (4) of Article XI of the Constitution of this State.⁴

⁴ Section 34 was added by the sixth amendment to the constitution. The amendment was proposed by a resolution of the General Assembly in 1903. It was ratified by the voters on November 8, 1904, and proclaimed adopted on December 5, 1904.

CONSTITUTIONAL CONVENTION

BULLETIN No. 9

The Executive Department



Compiled and Published by the
LEGISLATIVE REFERENCE BUREAU
Springfield, Illinois

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LEGISLATIVE REFERENCE BUREAU.

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I. SUMMARY.

This bulletin presents a detailed survey of the present executive organization of Illinois. This survey divides the executive organization into three groups: (1) The constitutional state officers. (2) The departments under the civil administrative code. (3) Offices, boards and commissions which are neither created by the constitution nor provided for by the civil administrative code. Following the detailed statement regarding the present executive organization, will be found an analysis of the present functions and duties of the present constitutional state officers.

The constitutional convention will have to do primarily with the state executive offices now provided for by the constitution, but special attention should be called to the fact that almost none of the duties of these offices are prescribed by the constitution. It is therefore necessary to resort to the statutes in order to describe the duties of these constitutional officers. These duties may, by statute, be withdrawn from the constitutional officers upon whom they are now imposed, and be transferred to purely statutory officers.

The departments under the Civil Administrative Code, and numerous miscellaneous offices and boards owe their existence entirely to statutes. The parts of the executive department which are based entirely upon statute have numerous duties which overlap and conflict with duties imposed by statute upon the constitutional state officers. This overlapping of functions as between the constitutional and the statutory officers may to a great extent now be dealt with and remedied by statute, although any thoroughgoing reorganization of functions as between the constitutional and the statutory officers is interfered with because of the difference in status of these two types of officers. As a matter of fact the political position of the constitutional state officers makes it practically impossible to transfer functions from these officers by statute, against the will of the persons holding such offices. The constitutional status of certain officers which are popularly elective therefore constitutes a very definite barrier to the readjustment of functions, unless such readjustment be made by the transfer of new functions to the constitutional officers.

This bulletin is devoted primarily to a detailed analysis of statutory provisions regarding the executive organization. Such an analysis is necessary in order to present a full view of the present executive organization. It is not assumed that the constitutional convention will seek to place in the constitution detailed provisions regarding the present executive organization. The executive department is one whose organization must expand with the increase in duties to be performed by the state. During the past fifty years an enormous increase has taken place in the duties performed by state

governments, and it is probable that this increase in state functions will continue. A detailed executive organization such as that proposed in the New York rejected constitution of 1915 or such as that authorized by a Massachusetts constitutional amendment of 1917 is likely to make great trouble in the future. Here, as elsewhere in the constitution, much is to be gained by omitting details from the constitution, leaving the executive organization to be built up by statutory enactments.

In the bulletin on the short ballot will be found some discussion of the application of the short ballot principle to state executive organization. The subject of the executive veto power is dealt with in only an incidental way in this bulletin, but will be found fully discussed in the bulletin dealing with the legislative department. The relationship of the governor to appropriations is fully discussed in a bulletin dealing with state and local finance. So far as they have to do with the legislative and judicial departments, the problems of appointment and removal of officers will be found discussed in bulletins upon the legislative and judicial departments. It has been thought desirable, however, to present in this bulletin a rather full review of the present constitutional provisions bearing upon appointment and removal, inasmuch as these matters primarily concern the executive department.

II. DEVELOPMENT OF THE EXECUTIVE DEPARTMENT.

Constitutional Development. The constitution of 1818 gave little power to the executive department. It provided that the executive power of the State should be vested in a Governor, but his powers were curtailed by granting extensive appointive powers to the General Assembly, and by placing the veto power in the hands of a council of revision composed of the Governor and the judges of the Supreme Court. The General Assembly was empowered to appoint judges of the Supreme Court and of inferior courts, and "an auditor of public accounts, an attorney general, and such other officers for the State as may be necessary . . ." The Governor appointed the secretary of state with the advice and consent of the Senate.

The power of the General Assembly to appoint certain officers proved unsatisfactory and the framers of the constitution of 1848 took steps to change this method of appointment. The first constitution contained the provision that the governor should appoint with the advice and consent of the Senate all officers whose offices were established by the constitution or by law and whose appointment was not therein otherwise provided for. The constitution of 1848 added the provision, "And no such officer shall be appointed or elected by the General Assembly." The intention to strengthen the executive was further demonstrated by the abolition of the Council of Revision and the substitution of a qualified veto power exercised by the governor alone. A majority vote of both houses, however, was all that was necessary to pass a measure over the Governor's veto and this was the same vote as had been necessary to enact a measure after its disapproval by the Council of Revision. The Constitution of 1870 again strengthened the power of the executive at the expense of the General Assembly by making a two-thirds vote necessary to override the veto of the Governor. Fourteen years after the adoption of the constitution (in 1884) the people ratified the only amendment to the executive article of the constitution of 1870 that has been adopted. This amendment further strengthened the governor's power by empowering him to veto items and sections in appropriation bills. This was an important step toward giving the executive a position of definite responsibility in regard to state appropriations and expenditures.

Part of the appointive power which the General Assembly possessed under the first constitution was in 1848 given to the Governor, and part of it was given to the people by providing for

more elective state officers. Under the Constitution of 1848, the secretary of state, auditor, and treasurer were elective, in addition to the Governor and the lieutenant governor, who were the only popularly elective state officers under the Constitution of 1818. The growing tendency to increase the number of state officers was manifest in the proposed constitution of 1862. Its enumeration of elective state officers, like many of its other provisions concerning the executive department, was a few years later embodied in the constitution of 1870. It proposed to have the same seven elective state officers we have today: Governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction and attorney general. These officers were only to be elected for a two-year term, which seems to indicate some dissatisfaction with popularly elected state officials. However, the terms of all popularly elected state officers, except treasurer, were fixed at four years by the Constitution of 1870, and the restriction that the Governor could only serve four years in any term of eight years was omitted.

Statutory development. In the preceding paragraphs we have traced the constitutional development of the executive department. There still remains to be considered the statutory development. The General Assembly has all powers not granted to the federal government nor forbidden the states by the Constitution of the United States, and all powers not forbidden it by the state constitution. Under these broad powers the General Assembly has enacted many statutes dealing with the executive department. The statutes, in fact, cover the greater part of this bulletin, and consideration of them is necessary in order to present the constitutional problems at issue.

The creation of separate offices, departments, boards and institutions, many of them with extensive powers, has been a gradual development. These statutory agencies were not a very important consideration for the framers of our earlier constitutions, for the executive department was not nearly as complex as it is today. At the time of the adoption of the Constitution of 1848, the constitutional state officers, and three state institutions embraced the entire executive department. When the Constitutional Convention of 1862 met, two institutions, a normal school, and two officers had been added. Between 1862 and 1870, six institutions, a normal school, the university and seven boards and offices were added, so that when the framers of the Constitution of 1870 met they were dealing with an executive department consisting of five state officers and about twenty-five independent offices, boards and institutions, which is less than one-fourth of the number that existed in 1917.

Each succeeding session of the General Assembly has led to the establishment of new authorities, often with little reference to previously existing authorities, either as to form of organization or the scope of their powers. Most of them were substantially independent

of each other, and subject to no control except the nominal supervision of the Governor. The assumption by the state of each new function, as a rule, involved the creation of a state administrative board, commission or officer, to which was entrusted the direct exercise of the function. These independent agencies tended toward the decentralization of the executive power, for the increase in the number of appointive offices did not bring about a corresponding increase in the administrative importance of the Governor.

A state board of equalization had been created in 1867 and its administration of state revenues seems to have caused the first tangible dissatisfaction with these independent agencies. Its members were elected, one from each congressional district, and it grew to be and long remained an important factor in state politics. A legislative commission appointed to investigate the revenue system of the state recommended its abolition as early as 1886, and a tax commission made the same recommendation in 1910.

Consolidation. Naturally, this irresponsible system of independent state boards was particularly bad for the state institutions, and because of their large number, geographical distribution, and the fact that they were spending the bulk of the appropriations, the conditions eventually became known to the people. In response to insistent demands because of some specific abuses, Speaker Edward D. Shurtleff appointed a special investigating committee January 14, 1908, in accordance with a resolution passed by the House of Representatives. This committee published an exhaustive report of over a thousand pages. It found the institutions in an unsatisfactory condition and recommended the creation of a central state board of control for their administration. Accordingly, a board of administration was created the following year (1909), to which was given the management and control of all the state charitable institutions.

The same session of the General Assembly that provided for the investigation of state institutions also passed a resolution directing the Governor to appoint an educational commission to investigate the common school system of the state. This commission published a comprehensive report on this subject and drafted a bill providing for the creation of a state board of education to strengthen our common school system. This board was to consist of the superintendent of public instruction, as chairman, and representatives of various school interests selected by the Governor with the approval of the Senate.

In 1913, the work of the fish commission and the game commissioner was consolidated, and a game and fish conservation commission was created to perform their functions.

In his inaugural address, in 1913, Governor Edward F. Dunne recommended the abolition of the state board of equalization, the consolidation of the park boards of the city of Chicago, and an examination into the affairs of the public institutions of the state

with a view to the reduction of expenditures. Subsequently, a resolution was passed by the General Assembly directing an investigation of the state boards, commissions and bureaus in order to determine whether greater efficiency and economy could be secured by a reorganization and consolidation of administrative machinery.

The committee appointed to carry on this work was known as "The Efficiency and Economy Committee." After an exhaustive investigation, the committee submitted a report recommending the consolidation of more than a hundred state offices into ten departments, under authorities directly responsible to the Governor for the conduct of their departments. The committee also recommended a revision of the laws relating to state contracts, and this revision was made by the General Assembly in 1915. The office of printer expert was abolished and a superintendent of public printing created with extensive and effective powers, but responsible to the Governor. This was practically the only change recommended by the Efficiency and Economy Committee made at the session of 1915, but the report of the committee formed the basis for the Civil Administrative Code, which was enacted two years later.

In 1916, Governor Frank O. Lowden made his campaign for the Republican nomination and for election largely upon the issue of state administrative reorganization. After his election, the General Assembly, in 1917, passed the Civil Administrative Code. It consolidated into nine departments more than fifty functions and departments previously independent of each other. It also provided for an executive budget. It is probably the most important and effective measure relating to governmental reorganization that has been enacted in any state in the Union.

The 51st General Assembly, in 1919, abolished the board of equalization and created a state tax commission in its place. This General Assembly also provided for the appointment of a commission to investigate and report a plan for the standardization of compensation of employes of the state, which is closely related to the important question of civil service. We have been discussing administrative officers and agencies. There remains to be considered the employes in the various divisions of the executive department.

Civil service. The demand for a state civil service system was first made a political issue in 1900. At that time there were but two state civil service commissions in the country—New York and Massachusetts. In 1905 a civil service law was enacted which applied the merit system of appointment to persons employed in the charitable institutions of the state, excluding all members of charitable boards, trustees and commissioners, superintendents of charitable institutions, one chief clerk and one stenographer for each institution. In each succeeding political campaign, both leading parties pledged their support to the extension of civil service. In 1909, with the establishment of the state board of administration, forty-seven new positions came under the merit system. The follow-

ing year the question, "Shall the next General Assembly extend the merit system by the enactment of a comprehensive and adequate state civil service law?" was submitted to the voters of the state under the public policy law. The result was 411,676 in favor of extension and 121,132 against extension. The civil service law was amended in 1911 by extending the merit system to many additional positions and places of employment in the state service, with certain exemptions. As a result of this extension, about two thousand new employes were brought under civil service, or eighty per cent of the entire service of the state, making a total of 4,479 employes under civil service as compared with 2,259 during the previous year.¹

The following year the constitutionality of the law was upheld by the Supreme Court in the case of *People, ex rel Gullett v. McCullough*, 254 Ill., 9 (1912), which is discussed in this bulletin under the functions of the civil service commission. The act has been repeatedly upheld by the Supreme Court. The court has decided, however, that the state board of agriculture (which was abolished January 1, 1919) and the farmers' institute are not state departments, their employes are not state employes, and, consequently, they were not under the civil service law, although supported by state appropriations.²

The next session after the extension of the civil service law (1913) saw the beginning of a movement to increase the number of exemptions from civil service. The state highway department and the public utilities commission were created and several positions in these departments were exempted from civil service. The Civil Administrative Code enacted in 1917 did not amend, modify or extend the application of the civil service law. When the code went into effect practically every employe in the classified service of the agencies that were abolished was transferred to a corresponding position under the new organization.

The Fiftieth General Assembly (1917), however, also enacted a statute providing that removals from civil service could be made without a trial or hearing, and that the civil service commission had no jurisdiction to review the act of the removing officer, nor to investigate the removal or a reduction in rank unless it was alleged that the removal or reduction was made for political, racial or religious reasons. The act also removed from the classified service of the state the superintendent and assistant superintendent of the capitol building and grounds, all law clerks and special investigators in the office of the attorney general, a private secretary and a stenographer for each elective officer, a private secretary to each director under the Civil Administrative Code, and insurance actuaries and examiners of insurance companies. The Fifty-first General Assembly in 1919 still further extended the exemptions by providing that all regularly licensed veterinary surgeons employed by the department of agriculture, and all clerks, watchmen and policemen employed in the offices of the elective officers in the executive department, and

¹ Sixth annual report of the civil service commission of Illinois, 1911, v. 1, p. 8.

² *State Board of Agriculture v. Brady*, 266 Ill. 592 (1915); *Illinois Farmers' Institute v. Brady*, 267 Ill. 98 (1915).

in the office of the clerk of the Supreme Court should be exempt from the classified service. It established a precedent by providing in an act creating a new board, the board for vocational education, that the board might appoint without reference to the civil service law such technical assistants, clerks and stenographers as might be necessary.

On December 1, 1919, there were 6,285 persons in the classified civil service of the state. Of this number 3,943 were in the department of public welfare.

Increase in appropriations. The appropriations for the biennium 1873-1874 were \$6,648,187. According to the statement issued by the auditor of public accounts, the appropriations for the biennium 1919-1920 were \$172,631,183. Of this amount \$60,000,000 is to be expended for a state system of hard roads, bonds for this amount having been authorized by popular vote; \$20,000,000 is for a deep waterway, this expense also to be defrayed by a bond issue; and \$29,195,124 is for state and federal aid roads. That is \$109,195,124 is for roads and waterways, leaving \$63,436,059, the amount appropriated for governmental expenses for the biennium. It is difficult to make any comparison of appropriations by departments because, in some cases, large amounts are appropriated to various officers and departments which have little control over the expenditure of the appropriations. The school fund which amounts to \$12,000,500 for the biennium 1919-1920 is appropriated to the auditor, but the superintendent of public instruction is the officer most closely related to its expenditure.

The department of public welfare and the University of Illinois also receive large appropriations. The appropriations to the department of public welfare for the state charitable, penal and reformatory institutions for the biennium 1919-1920 are \$19,636,213. The University of Illinois has an appropriation of \$5,000,500 for the same biennium.

The amount appropriated for the biennium 1919-1920 was nearly ten times the amount appropriated for 1873-1874. This increase was due largely to the increase in functions within the last half century. Many new functions have been assumed by the state and these functions are performed primarily by the executive department.

Summary. In summarizing the development of the organization of the executive department we find that the executive department of the state of Illinois is now composed of the Governor, and six other elective constitutional state officers, practically independent of him; nine departments operating under the Civil Administrative Code; and twenty-one independent statutory boards, commissions and offices, less than half of such boards, commissions and offices being

appointed by the Governor. There is also a classified civil service consisting of more than six thousand employes, and, in addition, numerous officers and employes exempt from civil service.

The constitutional convention is confronted with the problem of framing an executive article in a new constitution broad enough to form the fundamental basis for the operation of this complex executive department.

Every passing year sees the assumption by the state of new functions, and it will be necessary to have broad constitutional provisions, not requiring frequent change, to provide for an executive department to exercise these constantly changing and increasing statutory functions.

III. DESCRIPTION OF THE CONSTITUTIONAL AND STATUTORY FUNCTIONS OF CONSTITUTIONAL STATE OFFICERS.

Constitution of 1870. The constitution provides that each of the officers of the executive department, with the exception of the treasurer, shall hold his office for a term of four years, from the second Monday in January next after his election, and until his successor is elected and qualified. The election for Governor, lieutenant governor, secretary of state, auditor of public accounts and attorney general, is held on the Tuesday next after the first Monday of November, every four years. The next election will take place in November, 1920. The state treasurer is elected every two years. The superintendent of public instruction is elected for a term of four years at an election held midway between the general elections for officers of the executive department.

The returns of these elections are directed by the constitution to be sealed up and transmitted by the returning officers to the secretary of state, directed to the "Speaker of the House of Representatives," who, immediately after the organization of the House, before proceeding to other business, opens and publishes them in the presence of a majority of each house of the General Assembly, assembled in the hall of the house of representatives. The person having the highest number of votes for either of said offices, is declared duly elected. If two or more have an equal and the highest number of votes, the General Assembly, by joint ballot, chooses one of such persons for the office. Contested elections for any office are determined by both houses of the General Assembly, by joint ballot, in such manner as may be determined by law.

No officer of the executive department is eligible to any other office during the term for which he is elected. If the office of auditor, treasurer, secretary of state, attorney general or superintendent of public instruction becomes vacant by death, resignation or otherwise, the Governor is empowered to fill the office by appointment, and the appointee holds his office until his successor has been elected and qualified, in such manner as may be prescribed by law. The Governor and all civil officers of the state are liable to impeachment for any misdemeanor in office.

No qualifications are prescribed for any of these officers, except the Governor and lieutenant governor. An account is required to be kept by all officers of the executive department, and of all the public institutions of the state, of all moneys received or disbursed by them severally, from all sources and for every service performed, and a semi-annual report thereof is to be made to the Governor under oath. Any officer who makes false report is guilty of perjury and may be

punished accordingly. This report must be made at least ten days preceding each regular session, and the Governor transmits such reports to the General Assembly, together with the reports of the judges of the Supreme Court, of defects in the constitution and laws. The Governor may, at any time, require information, in writing, under oath, from the officers of the executive department and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

The officers of the executive department receive for their services, a salary established by law, which may not be increased or diminished during their official terms, and they may not receive to their own use, any fees, costs, perquisites of office or other compensation. All fees payable by law for any services performed by them must be paid in advance into the state treasury.

All civil officers, except members of the General Assembly and such inferior officers as may be by law exempted, are required to take an oath, which is set forth in full in the constitution, and no other oath, declaration or test may be required as a qualification. The article of the constitution which deals with the executive department defines an office and an employment as follows: "An office is a public institution created by the constitution or law, continuing during the pleasure of the appointing power, or for a fixed time with a successor elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished."

Constitutions of 1818 and 1848. A number of the general provisions of the earlier constitutions concerning state officers have been outlined in the history of the organization of the executive branch of state government, at the beginning of this bulletin. Among others which are of interest are the provisions concerning residence. The first restriction as to residence of state officers, occurred in the constitution of 1848 which provided that the Governor must reside at the seat of government during his term of office and the constitution of 1870 embodied the provisions that all state officers, except lieutenant governor, must reside at the seat of government during their term of office.

The constitution of 1848 contained distinctive provisions concerning the salaries of state officers. The constitution of 1818 prescribed the amounts of salaries to be paid until 1824, and after that the General Assembly had the power to fix salaries. The constitution of 1848 prescribed the amounts to be paid state officers, and in the proposed constitution of 1862 we find for the first time the present provision that they shall receive such salaries as are established by law.

The constitution of 1848 contained distinctive provisions concerning oath of office and impeachment. All civil, military, legislative, executive and judicial officers, were required to take an oath that they had not fought a duel, nor sent or accepted a challenge to fight a duel, nor been a second, nor in any way aided or assisted in a duel since the adoption of the constitution, and that they would not engage

in or be connected with any duel during their continuance in office. Possibly this oath was inserted because of the agreement between two members of the convention to fight a duel, to settle differences which arose in a bitter debate on the floor of the convention. The duel was to be held near St. Louis and was only stopped by the intervention of the police.¹

The first constitution contained the same provision concerning impeachment of civil officers that we have in our constitution today, "The Governor and all civil officers of the state are liable for impeachment for any misdemeanor in office." The constitution of 1848, provided, however, that the Governor and all civil officers should be liable for impeachment, during their continuance in office and for two years thereafter.

Statutes. Salaries of constitutional state officers are payable quarterly out of the state treasury on the warrant of the auditor. One private secretary and one stenographer for each elective officer in the executive department and all clerks, watchmen and policemen in these offices are exempt from civil service.

The Governor. The Constitution of 1870 declares that the executive department shall consist of a Governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction and attorney general, and that the supreme executive power of the state shall be vested in the Governor, who shall take care that the laws be faithfully executed. The Governor and the lieutenant governor must have attained the age of thirty years and have been for five years next preceding their election, citizens of the United States and of this state.

The Governor is required by the constitution to give the legislature at the commencement of each session and at the close of his term, information by message of the condition of the state and to recommend such measures as he may deem expedient. He is also required to accompany his message with a statement of all state funds received and paid out by him, together with an estimate of the amount of money to be raised by taxation for all purposes. He may convene the General Assembly in extraordinary session, and in case of a disagreement between the two houses with respect to adjournment, he may adjourn it to such a time as he thinks proper, provided it is not beyond the first day of the next regular session. This can only be done upon the certification of the fact of disagreement by the house first moving the adjournment.

With the advice and consent of the senate the Governor may appoint all officers whose appointment or election is not otherwise provided for by law, and no such officers may be elected or appointed by the General Assembly itself. In case of a vacancy, during the

¹ Moses' Illinois historical and statistical, v. 2 p. 556.

recess of the senate, in any office which is not elective, the Governor is directed to make a temporary appointment until the next meeting of the senate. He is also empowered to remove any officer, whom he may appoint, for incapacity, neglect of duty or malfeasance in office, and fill the office by a temporary appointment until the next meeting of the senate. After rejection by the senate no person can be nominated again for the same office at the same session unless at the request of the senate, nor may such person after rejection be appointed to the same office during a recess of the General Assembly. The Governor is liable for impeachment for any misdemeanor in office. If the office of any of the constitutional elective offices of the executive department (except the lieutenant governor) is vacated by death, resignation or otherwise, it is the duty of the Governor to fill the office by appointment, and the appointee holds his office until his successor is elected and qualified.

In case of the death, conviction on impeachment, failure to qualify, absence from the state, or other disability of the Governor, the powers, duties, and emoluments of the office, for the residue of the term, or until the disability is removed, devolve upon the lieutenant governor. If there is no lieutenant governor, or if he is incapable of performing the duties of the office, the president of the senate acts as governor, until the vacancy is filled or the disability removed, and if the president of the senate is incapable of performing the duties of Governor, they devolve upon the speaker of the house of representatives.

Through his veto power the Governor has an important control over the legislative department of the government. Every bill, which passes the senate and the house of representatives, must, before it may become a law, be presented to the governor. If signed by him, it becomes a law. If he disapproves it, he is required to return it with his objections to the house in which it originated. If both houses, two-thirds of the members concurring, pass the bill again, it becomes a law notwithstanding the disapproval of the Governor. If he fails to return any bill submitted to him within ten days (Sundays excepted), it becomes a law, as if he had signed it, unless the General Assembly by its adjournment in the meantime, prevents its return, in which case it becomes a law unless he files it with his objections in the office of the secretary of state within ten days of such adjournment. An amendment to this section of the constitution adopted in 1884 permits the disapproval of items and sections of appropriation bills.²

When vacancies occur in either house of the General Assembly the Governor is directed to issue writs of election to fill such vacancies. When vacancies occur in the representation of any state in the United States Senate the Governor is directed by the constitution of the United States to issue writs of election to fill such vacancies, but the legislature may empower the Governor to make temporary appointments until the vacancy is filled by election.

The Governor also has some powers with respect to judicial matters. He may grant reprieves, commutations and pardons, after conviction, for all offenses, subject to the regulations prescribed by law

² *Fergus v. Russel*, 270 Ill. 304 (1915); *People ex rel State Board of Agriculture v. Brady*, 277 Ill. 124 (1917).

relative to the application for such pardons, reprieves and commutations. He commissions all judicial officers of the state. In case of vacancy, where the unexpired term of a judge does not exceed one year, he has the power of making an appointment to fill such vacancy. The judges of the Supreme Court are directed to report to him in writing such defects and omissions in the constitution and laws as they may find to exist, together with approved forms of bills.

Another important power of the Governor is his right to disapprove contracts for fuel, stationery and printing paper for the use of the state, contracts for printing, binding and distributing laws and journals and all other printing ordered by the General Assembly.

The Governor is the commander-in-chief of the state militia and may call out any part of it to execute the laws, suppress insurrection and repel invasion. He commissions all militia officers of the state.

The constitution of the United States provides that a person charged in any state with treason, felony, or other crime, who flees from justice and is found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

Constitutions of 1818 and 1848. The wording of the first sentences of the executive articles of the constitutions of 1818 and 1848 is identical. They declare that, "The executive power of the state shall be vested in a governor." The constitution of 1870, however, provides that "The *supreme* executive power of the state shall be vested in a governor who shall take care that the laws be faithfully executed" and "The executive department shall consist of a governor, lieutenant governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction and attorney general." The qualifications for governor have been changed by each succeeding constitutional convention. Under the constitution of 1818, the Governor was required to be at least thirty years of age, a citizen of the United States thirty years, and to have resided within this state two years next preceding his election. The constitution of 1848 required that a person to be eligible to the office of Governor must have attained the age of thirty-five years, and have been a resident of this state for ten years and a citizen of the United States for fourteen years.

The veto power of the Governor was of little importance under the first constitution. A council of revision composed of the Governor and the judges of the Supreme Court was given this power. This council was empowered to pass upon all bills which passed the house of representatives and the senate. If it should appear improper to them that a bill should become a law they were directed to return the bill, together with their objections, to the house in which the bill originated. If upon reconsideration it was approved by a majority of the members elected to both houses, it became a law over their objections. If the bill was not returned within ten days after it was presented, it became a law. The council of revision was abolished by the constitution of 1848 and the Governor was given a qualified veto power. Under the earlier constitution a bill could be passed over the objection of the Governor by the vote of a majority of the members elected, but the constitution of 1870 requires a two-third vote.

The constitution of 1818 gave the Governor the power to grant reprieves and pardons after conviction except in cases of impeachment. The provisions of the constitution of 1848 and of the proposed constitution of 1862 concerning pardons were identical. They excepted the crime of treason as well as impeachment and were quite detailed. A biennial report of pardons and reprieves was required to be made by the Governor to the General Assembly. The Governor had the power to suspend the execution of a sentence for treason until the case could be reported to the General Assembly at its next meeting, when the General Assembly could pass upon it. These constitutions also contained provisions similar to the present constitution, making the pardoning power of the Governor subject to such regulations as may be provided by law.

The power of the Governor of this state to fill vacancies has generally been more extensive than his power of appointment. The constitution of 1848 provided that when a vacancy occurred in the office of secretary of state, the Governor should have the power to appoint a secretary of state to serve until another was elected and qualified. It also contained the provision that the filling of all vacancies not otherwise provided for by the constitution should be made in such manner as the General Assembly should direct, provided no such officer should be elected by the General Assembly. The effect of this proviso was generally to place the power to fill vacancies in the Governor.

Statutory Powers and Duties. In case of a vacancy in the office of Governor and lieutenant governor, the officer performing the duties of the office of the Governor, or if there is no such officer, the secretary of state, is directed to issue a proclamation appointing a day for a special election to fill such vacancies, and to call a special session of the General Assembly to canvass the votes of the election, unless there is a regular session within ninety days.

One of the most effective powers of the Governor as the supreme executive authority of the state is the power of appointment of officers of the executive department. Under the Civil Administrative Code, with the advice and consent of the senate, he appoints the heads of the nine departments, of all divisions of the departments, and the members of the advisory boards. He also appoints numerous officers listed under the chapter of this bulletin entitled, "Officers and departments not created by the constitution and not under the Civil Administrative Code."

The Governor is charged by the Civil Administrative Code and various other statutes with the examination and approval of the bonds of various state officers and in many cases he may require additional security if he deems it necessary. Some statutes also impose upon him the duty of ordering prosecution in the event of the violation of any of the conditions of the bond.

The Governor has the power of appointment of commissioners to take acknowledgments or proof of execution of deeds and other instruments, and depositions, in other states. He is also empowered to appoint one director for each pawners' society organized within the state, and this director is required to report to the Governor, under

oath, any violation of the provisions of the law by the corporation, its officers or employes.

The Governor is authorized to offer a reward for the apprehension of fugitives from justice who are charged with certain crimes.

The Governor is directed to designate an "Arbor and Bird Day" annually.

The Governor is ex officio chairman of the joint legislative reference bureau, president of the board of commissioners of the state library, a member of the board of trustees of the University of Illinois, primary canvassing board, state tax levy board and the centennial building commission.

The Governor receives a salary of \$12,000 together with the use and occupancy of the executive mansion. Employes at the executive mansion are exempt from civil service.

The secretary of state is required to keep a register and record of all the official acts of the Governor. All state contracts, which are awarded according to law by the department of public works and buildings, must be awarded in the presence of the Governor and subject to his approval.

The state canvassing board must canvass the votes in the presence of the Governor and he issues certificates of election or commissions in accordance with the result of the election. He also issues proclamations of the result of the canvass of votes on constitutional amendments.

The constitution and various statutes require that every branch of the executive department shall make reports to the Governor. He may order any of the reports to be printed, bound and distributed at public expense. The Governor may not approve any voucher for services of any person employed in violation of the provisions of the civil service law of the state.

The directors of each department under the Civil Administrative Code are required to report in writing annually on or before the first day of December to the Governor concerning the condition, management and financial transactions of their respective departments.

With the approval of the governor directors of departments under the Civil Administrative Code may establish and maintain branch offices at places other than the seat of government.

The department of finance is directed to prepare and submit to the Governor biennially, not later than the first day of January preceding the convening of the General Assembly, a state budget. Not later than four weeks after the organization of the General Assembly the Governor is directed to submit the state budget embracing the amounts recommended by him to be appropriated to the various departments of state government, and for all other public purposes, and the estimated revenue from taxation and other sources.

The department of public welfare is directed to investigate, when asked by the Governor, into any or all phases of the management of state institutions and to report its findings.

The Governor is empowered to change the boundaries of the penitentiary districts of the state from time to time so as to make the size of the district bear due proportion to the capacity of the prisons.

When he deems such change necessary he certifies the same to the secretary of state, who is directed to notify the proper authorities. Under the statutes governing the penitentiaries the Governor is given various duties and powers concerning the visiting of the prisons, approval of exchange of prisoners, and inquiry into abuses and discipline.

The Governor, with the advice and consent of the senate, is empowered to appoint in each county in the state, a public administrator and a public guardian. With the advice and consent of the senate, the governor appoints and commissions as notaries public as many persons resident in the county in this state for which they are appointed, as he may deem necessary.

By legislation enacted before 1870, the Governor is empowered to appoint West Chicago park commissioners and the Lincoln park commissioners, in the county of Cook.

When vacancies occur among certain elective officers designated by statute, the governor is directed to issue writs of election to the various county clerks. It is the duty of the county clerks in certain cases to notify the governor of vacancies.

It is the duty of the governor on or before October 1 of each year, to furnish the board of election commissioners in cities which have elected to come under such boards, the names of all persons pardoned by him out of the penitentiary for any crime of which the party was convicted in a court of the county where said city is located.

Whenever there is in any city, town, or county, a tumult, riot or mob, or body of men, acting together by force with attempt to commit a felony, or to offer violence to persons, or property, or to break or resist the laws of the state, and this fact is made to appear to the Governor, it is his duty to order such military force as he may deem necessary to aid the civil authorities in suppressing violence and executing the law.

If any person is taken from the hands of a sheriff and lynched, it is prima facie evidence of failure on the part of the sheriff to do his duty, and upon this fact being made to appear to the governor, he is directed to declare the office of the sheriff vacant. Within ten days the sheriff may file with the Governor a petition for reinstatement. If the Governor finds that the sheriff did all in his power to protect the life of the person lynched, he may reinstate the sheriff and his decision in the matter is final.³

When a vacancy occurs in the office of United States Senator, the Governor is directed to make a temporary appointment to fill such vacancy until the next election of representatives in congress. Where vacancies exist among the representatives in congress he is directed to issue writs of election to fill such vacancies.

Lieutenant Governor. With the exception of a few minor details, the provisions of the three constitutions of the state of Illinois concerning the lieutenant governor are the same. In each

³ See *People ex rel Davis vs. Nellis*, 249 Ill. 12 (1911).

constitution, the qualifications for lieutenant governor are the same as those for Governor, and the qualifications for Governor were changed by each succeeding constitution. The lieutenant governor was given a right by the Constitutions of 1818 and 1848, when the senate was in committee of the whole, to debate and vote on all subjects, but in the Constitution of 1870 this provision is omitted.

Under the present constitution the lieutenant governor is the only officer of the executive department who is not required to reside at the seat of government during the term for which he is elected. He must be thirty years of age and a citizen of the United States, and of the state of Illinois for five years next preceding his election. In case of the death, conviction on impeachment, failure to qualify, resignation, absence from the state, or other disability of the Governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability is removed, devolve upon the lieutenant governor. He acts as president of the senate and votes only when the senate is equally divided. The senate is directed to choose a president pro tempore to preside in case of the absence or impeachment of the lieutenant governor, or when he holds the office of Governor.

The only section of the statutes which deals with the office of lieutenant governor provides that he shall receive an annual salary of \$2,500, and if the powers and duties of the office of Governor devolve upon him, he shall, during the continuance of such emergency, be entitled to the emoluments thereof.

Secretary of State. The Constitution of 1818 provided that the secretary of state should be appointed by the Governor with the advice and consent of the senate. In 1848 he was made elective at the same time as the Governor, for a term of four years, and these provisions were not changed by the Constitution of 1870. By this constitution it is provided that the election returns for officers of the executive department must be transmitted to the secretary of state, directed to the speaker of the house of representatives, and it is his duty to call the house of representatives to order at the opening of each new assembly, and preside over it until a temporary presiding officer has been chosen and has taken his seat. He is required to record and file the oaths of the members of the General Assembly. The constitution further provides that the great seal of state be kept by the secretary of state and used by him as directed by law.

Statutory Powers and Duties. Most of the powers and duties of the secretary of state are prescribed by statute and these statutes cover a number of unrelated subjects. He is the keeper of the executive records and of the records of the General Assembly and he is required to furnish certified copies of any laws or records on file in his office on payment of the lawful fees. He is custodian of the state buildings and grounds in Springfield. He has charge of the furniture of the General Assembly and of the state house

except as otherwise provided, and he has charge of the advertising for bids and award of fuel contracts for the use of the state at the heating and lighting plant in Springfield.

The secretary of state is also charged with the licensing of domestic corporations, the admission of foreign corporations, and he has a limited supervision over some general corporations not subject to any other state officer or board. The administration of the law regulating the sale of securities, the so-called "blue sky" law, is also given to him. He has charge of the registration and licensing of motor vehicles and the examination and licensing of chauffeurs.

The secretary of state is the chief administrative officer of the election machinery of this state. Under the primary and general election laws many duties in connection with the filing of nominating petitions, certification of candidates, notices concerning contests, submission of questions of public policy and constitutional amendments, canvass of returns of elections, and compilation of abstracts of votes, are imposed upon him.

The secretary of state is also charged with the licensing of itinerant vendors; the recording of trade marks; the issuance of instructions and forms to commissioners of deeds, appointed to serve in other states; and the issuance of certificates of magistracy to notaries public.

The superintendent of the capitol buildings and grounds and his assistant are under the control of the secretary of state and are exempt from the provisions of the civil service law. The secretary of state is ex-officio state librarian, secretary of the court of claims, chairman of the Illinois library extension commission and a member of the following boards: primary canvassing board, state canvassing board, board of voting machine commissioners, board of commissioners of the state library, and centennial building commission.

The salary of the secretary of state is \$7,500 per annum, and he is required to give bonds for \$100,000 to be approved by the Governor and two justices of the Supreme Court.

The secretary of state is the keeper of all public acts, laws and resolutions passed by the General Assembly, and he has charge of the publication and distribution of the session laws. He is also the keeper of the journals and other documents which the clerks of the respective houses of the General Assembly are required to deliver to him at the close of each session.

It is the duty of the secretary of state to keep a fair register of all the official acts of the Governor, to countersign and affix the seal of state to all commissions required by law to be issued by the Governor, and to make and keep proper indexes to all executive records in his office.

The secretary of state is authorized to award certain fuel contracts subject to the approval of the Governor. The Civil Administrative Code directs the secretary of state to provide rooms for departments existing under its provisions and practically every statute creating a new department imposes a like duty upon him.

The secretary of state is required to file his bond in the office of the auditor of public accounts.

The treasurer and the secretary of state are authorized and required to employ watchmen to guard and preserve from fire the public buildings in Springfield. These watchmen are exempt from the provisions of the civil service act.

The secretary of state and the various county clerks have numerous related functions in connection with the administration of the election laws. At the end of each month the secretary of state is required to print and mail to all county clerks, sheriffs and chiefs of police in cities having a population of 5,000 or over, a complete list of all motor vehicles registered with him, together with the names of the owners. He is required to file annually a list of all corporations and certain information concerning their standing with the recorder of deeds in each county. Such records are to be kept open for public reference.

The secretary of state is required to keep a register of all cities, towns and villages organized under the general incorporation act, and in case of change of names of cities, towns or villages, local authorities must certify the same to the secretary of state. All records of organization under the general incorporation act must be filed in his office.

Auditor of Public Accounts. The Constitution of 1818 provided for the appointment by the General Assembly of an auditor of public accounts whose duties should be regulated by law. The Constitution of 1848 made the auditor an officer elected by the people for a term of four years. The Constitution of 1870 makes no change in this provision. It further provides that "No money shall be drawn from the treasury except in pursuance of an appropriation made by law and on presentation of a warrant issued by the auditor thereon" and the auditor is required within sixty days after the adjournment of each session of the General Assembly to prepare and publish an itemized statement of all money expended at the session.

Statutory Powers and Duties. The auditor is required to keep an official seal to be used to authenticate all writings, papers, documents, and accounts required by law to be certified from his office. It is his duty to keep the accounts of the state with any state or territory, and with the United States, with all public officers, corporations, and individuals having accounts with this state, and to audit all accounts of public officers, who are to be paid out of the state treasury, of the members of the legislature, and all persons authorized to receive money out of the treasury, by virtue of any appropriation made by law particularly authorizing such account. On ascertaining the amount due any person from the treasury he is directed to issue his warrant on the treasury for the sum due, and he must keep a record of all warrants drawn by him, numbering them, in a book to be kept for this purpose. He must personally

sign all warrants for money on the treasury of the state and all other papers necessary and proper for the auditor to sign. He is required to keep a correct record of all accounts audited by him, and an account of all taxes or other money, which may be due by any person to the state, and an account of all amounts which may be paid into the state treasury.

The above provisions deal with the auditor as an administrative officer in charge of the accounting system of the entire state administration. He has also numerous functions in connection with the supervision of corporations. He has charge of the regulation of state banks, trust companies, building and loan associations, wage loan corporations, mortgage loan corporations, pawnbrokers' societies and title guarantee companies. Under a banking law enacted in 1919, which under the constitution is subject to a referendum, his powers of supervision over banks will be increased. Bank examiners, and examiners of building and loan associations in this office are exempt from civil service.

The auditor is ex-officio a member of the state canvassing board and of the tax levy board.

The auditor receives a salary of \$7,500 and is required to give bond to be approved by the Governor and two justices of the Supreme Court in the sum of \$50,000. If the Governor deems any bond filed by the auditor insufficient, he may require additional bond not exceeding \$50,000. Whenever any condition of the bond is broken, it is the duty of the Governor to order prosecution.

The auditor is directed to credit the treasurer's account with the amount of cancelled warrants returned to him monthly, by the treasurer and give him a receipt for the same, and enter the date of cancellation of such warrants in his warrant book. He must countersign all receipts for moneys issued by the treasurer, and charge the treasurer with the amount of the receipts. No person may be employed as a clerk in the auditor's office who is at the same time employed in any capacity in the treasurer's office.

The treasurer is required to open the proposals for the deposit of state moneys, in the presence of the auditor and the director of finance. The secretary of state is directed to deposit his bond in the office of the auditor.

The auditor has the right to examine all the books, documents, memoranda, and records of every department of state government receiving money which is required to be paid into the state treasury, in order to verify the accuracy of the accounts.

The civil service commission is directed to certify to the auditor all appointments to offices and places in the civil service and all vacancies occurring by dismissal, resignation or death. The auditor is only permitted to draw his warrant on the treasurer for the payment of the salary or compensation of any person in the classified service upon the certification of the civil service commission that the payment is in accordance with the civil service law and rules.

The county superintendents of schools are required to report the sale of township school lands to the auditor and the auditor is empowered to issue patents for such lands.

The auditor is required to keep a record of the names and boundaries of the several townships organized in counties throughout the state. In order to make up this record, the county clerks are required to forward the auditor an abstract of the report of the commissioners appointed to divide the county into towns.

The bonds of county collectors of taxes, if found to be in conformity with the law by the auditor, must be filed in his office and the fact thereof certified to the county clerk by him. Upon the settlement of the account for taxes with the state, the auditor must furnish the county collector with a duplicate certificate to that effect. The county collector is required to file one of these certificates in the office of the county clerk. Inheritance taxes are collected by the county treasurers under the supervision of the attorney general and are paid into the state treasury through the office of the state auditor. An order is issued by the auditor directing the state treasurer to receive the money.

The county clerks of the several counties in the state are required to report to the auditor a list of the swamp and overflowed lands sold in their respective counties for the year ending May first, and the auditor must enter the same in the tract books in his office.

The auditor of public accounts has been designated as the custodian of all transcripts, documents and records pertaining to the United States Land Office, formerly located at Springfield, Illinois, which were transferred to the state of Illinois, by the secretary of the interior, in accordance with an act of congress approved July 31, 1876.

Treasurer. The Constitution of 1818 provided that the state treasurer should be appointed biennially by the joint vote of both branches of the General Assembly. He was made a popularly elective officer with a term of two years by the constitution of 1848. The provisions that he should be ineligible to the office of state treasurer for two years next after the end of the term for which he was elected, was added by the Constitution of 1870, and this constitution further provided that he might be required by the Governor to give reasonable additional security, and in default of so doing his office should be declared vacant. The treasurer is the only officer of the executive department of the state that the constitution does not expressly prohibit from holding other public office during the term for which he is elected.

All taxes levied for state purposes are required by the constitution to be paid into the state treasury and no money may be drawn from the treasury except in pursuance of an appropriation made by law and on presentation of a warrant issued by the auditor thereon.

Statutory Powers and Duties. It is the duty of the state treasurer to receive the revenues and all other public moneys of the state, and all moneys authorized by law to be paid to him, and safely keep the same. He is required to keep an official seal to authenticate all writings, papers and documents required by law to be certified from his office.

He is required to deposit all moneys received by him on account of the state within five days after receipt in such banks as he may, according to law, designate as state depositaries. All interest received on such moneys is the property of the state of Illinois and the treasurer is required to advertise for proposals for the deposit of state moneys.

The treasurer may not pay any salary or wages for services as an officer or employe in the classified service of the state unless the person is employed in accordance with the provisions of the civil service act.

He is ex-officio a member of the state canvassing board, the primary canvassing board, and the tax levy board, and ex-officio treasurer of the board of trustees of the teachers' pension and retirement fund.

The treasurer receives a salary of \$10,000 and is required to furnish a bond of \$500,000 to be approved by the Governor, and two justices of the Supreme Court. If the Governor deems the bond of the state treasurer insufficient, he may require additional bond not to exceed \$500,000. Whenever the condition of the bond of the treasurer is broken, it is the duty of the Governor to order prosecution.

All persons paying money into the state treasury are required to obtain an order from the auditor directing the treasurer to receive such moneys, and the treasurer may not pay out of the treasury any money except upon the warrant of the auditor. The treasurer is required to keep regular and fair accounts of all moneys received and paid out by him, stating particularly on what account each amount is received or paid out. At the close of each month, he reports to the auditor the amount of money received and paid out by him during the month and deposits with the auditor all warrants, properly cancelled, which he may have paid, and takes the auditor's receipt for the cancelled warrants. He is required to make a biennial report to the Governor. No person may be employed as clerk in the auditor's office who is employed in any capacity in the treasurer's office.

Within ten days after the receipt of the proposals for the deposit of state moneys, the treasurer is required to open them in the presence of the auditor of public accounts and the director of finance. He is empowered to make the awards himself.

With a few exceptions the fees collected by state boards, commissions, institutions, departments and offices are required to be paid into the state treasury.

With the consent of the attorney general, the treasurer is empowered to enter into agreements concerning inheritance taxes, in certain estates involving remainders or estates in expectancy, such agreement to be in the form of a composition or settlement of taxes.

The treasurer and the secretary of state are authorized and required to employ watchmen to guard and preserve from fire the public buildings in Springfield. These watchmen are exempt from the provisions of the civil service act.

The administrative officers, boards, commissions or offices of the various schools or institutions coming under the provisions of the state institution teachers' pension and retirement fund act, are directed to transmit quarterly to the state treasurer the sums retained from teachers' salaries in accordance with the act and to make an annual statement to him within seven days after the thirtieth day of June of each year, of all moneys so retained.

The board of directors, boards of education or other governing body of the public school in each district coming under the provisions of the teachers' pension and retirement fund act are required to forward to the state treasurer within seven days after June 30, a statement of all moneys retained from teachers' salaries in accordance with the provisions of the act, together with such moneys, or a statement that no teacher in that district comes under the provisions of the act.

County collectors of taxes are directed, upon presentation to the state treasurer of a statement from the auditor of the exact amount of taxes due to be paid into the state treasury, to pay the same to the state treasurer. In connection with the administration of the inheritance tax, the treasurer is directed to furnish each county judge with a book in which to enter inheritance tax assessments. It is the duty of the county treasurer to pay to the state treasurer on the first day of every month, all inheritance taxes collected by him.

The receipts from the sale of land belonging to aliens, where they have failed to become naturalized after the required length of time, are to be delivered by the clerk of the county court to the state treasurer.

Before constitutional prohibitions were imposed, various municipal corporations of the state had issued bonds in aid of such local improvements as the bulding of railroads and other public utilities. These bonds are secured by special taxes, which have accumulated in the state treasury and the treasurer is charged with the payment of the coupons on these bonds semi-annually.

The state treasurer has been designated by various acts of congress, supplemented by the necessary state laws, as the custodian of certain moneys distributed by congress to the states for various purposes. These funds are:

- (1) Support of disabled soldiers and sailors (1888).
- (2) The promotion of vocational education (1919).
- (3) Federal aid roads act (1916).
- (4) Treatment and prevention of venereal diseases (1918).
- (5) For the benefit of the University of Illinois under
 - (a) An act concerning agricultural colleges, approved July 2, 1862.
 - (b) An act to apply a portion of the proceeds of the public lands, approved August 30, 1890.

- (c) An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1908, approved March 4, 1907.

Superintendent of Public Instruction. The Constitution of 1870 provides for the election of a superintendent of public instruction for a term of four years. This election is held midway between the elections for Governor and the principal officers of the executive department. The Constitution of 1818 contained no specific mention of education and the Constitution of 1848 had only a brief reference to it in connection with taxation. The office of state superintendent of common schools had, however, been created by statute in 1845. The secretary of state held this office ex-officio. The office of state superintendent of public instruction was created by statute in 1854 as a separate elective office, with a term of office of two years. The proposed Constitution of 1862 made the superintendent of public instruction an elective state officer but he was the only constitutional state officer not enumerated among the officers comprising the executive department. The Constitution of 1870 lengthened the term to four years and by the provision for the election at a time other than the general election for state officers indicated a recognition of the desirability of keeping the office as far as possible out of politics.

Statutory Powers and Duties. The Constitution of 1870 says that "The General Assembly shall provide a thorough and efficient system of free schools whereby all children of this state may receive a good common school education." In accordance with this provision many statutes have been enacted, and the superintendent of public instruction has been generally charged with the administration of these laws. He is empowered to supervise all of the common and public schools of the state, and to make rules and regulations for carrying into effect the provisions of the school law. He is empowered to examine teachers, grant and revoke certificates, and recognize those from other states. Publishers of textbooks are required to file copies of their books and price lists with the superintendent of public instruction and he issues a list of textbooks filed with him, for the use of school directors.

He is ex-officio secretary of the normal school board, executive officer of the board for vocational education, president of the board of trustees of the Illinois teachers' pension and retirement fund, a member of the board of commissioners of the state library, of the trustees of the University of Illinois, and of the farmers' institute. He is ex-officio chairman of the teachers' examining board and appoints one member for a four-year term. He appoints the other three members, county superintendents, each to serve three years, one to be appointed annually upon the recommendation of the county superintendents section of the state teachers' association at its annual meeting.

The superintendent of public instruction receives a salary of \$7,500 and is required to give bond in the penal sum of \$25,000.

The superintendent of public instruction is required to transmit to the Governor biennially a report containing various statistics concerning school attendance, administration and finance. This report is transmitted to the General Assembly at the beginning of each regular session. He has supervision over the distribution of school funds, and may require the withholding from a county superintendent of the amount due him for his compensation or due to his county, from the state school fund until the required information concerning schools has been sent to the state superintendent. Appeals may be taken to the courts from the decision of the state superintendent.

It is the duty of the superintendent of public instruction to visit such of the state institutions as are educational in character and to examine their facilities for instruction. The superintendents of these institutions are required to make reports to him on matters relating to their institutions at such times and in such form as he may prescribe.

It is his duty to confer with the state board of health, state architect, and state fire marshal, and to prepare specifications for the minimum requirements for heating, ventilation, lighting, sanitation, and safety against fire, which will conserve the health and safety of the children attending the public schools.

It is the duty of the superintendent of public instruction to designate the statistics which school officers are required to report to the county superintendent, to authorize county superintendents to procure necessary assistance to conduct teachers' institutes, to require reports from county superintendents, township trustees, and authorities of townships, cities or districts maintaining schools under special charters, and advise county superintendents as to the best manner of conducting schools, constructing and furnishing school houses, and examining and procuring competent teachers. He is the legal adviser of school officers and it is his duty, upon request of any school officer, to give his opinion in writing upon any question arising under the school laws of the state.

He is given the power to determine all controversies arising under the school laws, coming to him by appeal from county superintendents. County superintendents of schools are required to mail copies of all bonds of township treasurers approved by them to the superintendent of public instruction, said copies to be filed in his office.

Attorney General. The Constitution of 1818 provided for the appointment by the General Assembly, of an attorney general, whose duties should be regulated by law. In accordance with this provision, the first legislature in 1819 prescribed the duties of the attorney general and provided that he be elected by the General Assembly for a term of two years. The Constitution of 1848 contained no mention of the attorney general and the office was discontinued. By statute, in 1867, it

was again created, to be filled first by appointment by the Governor for a term of two years, and afterwards to be an elective office. Under the Constitution of 1870 the attorney general is named as one of the officers of the executive department, elected by popular vote for a term of four years. The constitution confers no express powers upon the attorney general and prescribes no express duties for him to perform. It simply provides that he shall perform such duties as may be prescribed by law.

The Supreme Court of this state, has, however, construed the constitutional provisions so as to invest the office with all the common law powers and duties of the Attorney General. In *Fergus vs. Russel*, 270 Ill., 304, 342 (1915), it says:

"By our constitution we created this office by the common law designation of Attorney General and thus impressed it with all its common law powers and duties. As the office of Attorney General is the only office at common law which is thus created by our constitution the Attorney General is the chief law officer of the state, and the only officer empowered to represent the people in any suit or proceeding in which the state is the real party in interest, except where the constitution or a constitutional statute, may provide otherwise."

Statutory Powers and Duties. The duties of the attorney general are:

To appear for and represent the people of the state before the Supreme Court, in all cases in which the state or the people of the state are interested.

To prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.

To enforce the proper application of funds appropriated to the public institutions of the state, prosecute breaches of trust in the administration of such funds, and when necessary, prosecute corporations for failure or refusal to make the reports required by law.

To keep in proper books, a register of all cases prosecuted or defended by him, in behalf of the state and its officers, and a record of all official opinions given by him during his term of office, and to deliver the same to his successor in office.

To file an information in the nature of a *quo warranto* against any person holding office illegally and against any corporation holding or exercising any franchise or license in violation of law.

To appear for and represent the interests of the state in all matters before the court of claims.

To institute prosecutions for violations of the civil service laws; to appear against trust companies which administer estates in cases of violations of the law; to prosecute pawnbrokers societies carrying on business illegally; and to institute proceedings against foreign and domestic corporations in certain cases. (There are a large number of other statutes which provide specifically for action by the attorney general for their enforcement.)

To examine the title of land in the improvement of which public money is proposed to be spent. His approval of the title of the

land is necessary before any money can be legally expended in such improvements.

To exercise general supervision over the assessment and collection of the inheritance tax, with authority to apply to the county court for the appointment of appraisers, and to appeal from any appraisal and assessment.

The attorney general is *ex-officio* a member of the state canvassing board. Regular and special assistants, law clerks, special investigators and special attorneys in the attorneys general's office are exempt from civil service.

The attorney general receives a salary of \$10,000 per annum. Before entering on the duties of his office, he is commissioned by the Governor, and must execute a bond for \$10,000 for the faithful discharge of the duties of his office. The attorney general must give a bond approved by the Governor and whenever the Governor shall deem any bond filed by the attorney general insufficient, he may require additional bond of not exceeding \$10,000.

It is the duty of the attorney general to institute and prosecute all proceedings in favor of or for the use of the state, which may be necessary in the execution of the duties of any state officer; to consult with and advise the Governor and other state officers, and give when requested written opinions upon all legal or constitutional questions relating to the duties of such officers; to give written opinions, when requested by either branch of the General Assembly or any of its committees, upon any legal or constitutional question.

The by-laws of building and loan associations must be submitted to him and approved by him before the auditor can issue a certificate of organization. The attorney general must certify the declaration of incorporators of life insurance companies as legal and sufficient before the insurance superintendent can give the company a permit to do business in this state. A number of other statutes make his approval necessary in certain cases.

The department of finance is required to report to the attorney general for such action as the attorney general may deem necessary, all facts showing illegal expenditures of public money or misappropriation of the public property.

The approval of the attorney general is necessary to all agreements made by the state treasurer for a composition or settlement of inheritance taxes in estates in expectancy or estates involving remainders.

It is the duty of the attorney general to consult with and advise the several state's attorneys in matters relating to the duties of their office; and, when in his judgment, the interest of the people of the state require it, he may attend the trial of any party accused of crime and assist in the prosecution. It is the duty of the state's attorney whenever it may be necessary, and in cases of appeal or writ of error from his county to the Supreme Court, which it is the duty of the attorney general to attend, to furnish the attorney general with a brief, showing the nature of the case and the questions involved, a reasonable time before the trial of such appeal or writ of error.

In cases of appeals to the county court concerning appraisements in inheritance tax matters, it is the duty of the county clerk to notify the attorney general and later to send him a certified copy of the judgment in the cause. It is the duty of the state's attorney to render assistance to the attorney general in the institution and prosecution of suits concerning inheritance taxes, when requested to do so. The county treasurer is required to send the attorney general a quarterly statement of all inheritance taxes due and unpaid.

IV. DESCRIPTION OF THE FUNCTIONS OF DEPARTMENTS UNDER THE CIVIL ADMINISTRATIVE CODE.

General. The Civil Administrative Code was enacted by the General Assembly in 1917 and went into effect July first of that year. It reorganized and consolidated fifty or more functions and departments, previously existing independently of each other, into nine departments, with a director appointed by the governor with the advice and consent of the senate for a term of four years, at the head of each department. Several administrative and unpaid advisory boards were created in the various departments.

It is the duty of the advisory boards to consider and study the entire field of their work; to advise the executive officers of their departments upon the request of such officers; to recommend on their own initiative, policies and practices, which recommendations the executive officers of the department are directed to consider, and give advice or make recommendations to the Governor and the General Assembly when so requested, or on their own initiative. The advisory boards have the power to investigate the conduct of the work of the departments with which they are associated. Such boards must hold meetings not less frequently than quarterly, and the director of the department and the Governor may be present and be heard upon any matter coming before the board. Members of such boards receive no compensation.

One private secretary for each director is exempt from the classified civil service of the state. The salaries of the directors vary from \$5,000 to \$7,000 per annum and are payable monthly. Each officer, whose office is created by the code is required to take and subscribe the constitutional oath of office, which oath must be filed in the office of the secretary of state. Each executive and administrative officer, whose office is created by the code, is required to give a bond with security to be approved by the Governor, in such penal sum as the Governor may fix, not less than \$10,000, which bond is to be filed in the office of the secretary of state. Annually, on or before the first day of December, and at such other times as the Governor may require, the directors of the departments are required to report to the Governor in writing concerning the condition, management and financial transactions of their respective departments. In addition to such reports, each director of a department is required to make the semi-annual and biennial reports required by the constitution.

The directors of departments are directed to devise a practical and working basis for co-operation and co-ordination of work, eliminating duplication and overlapping of functions. Whenever power is vested by the code in a department to inspect, examine, secure data or

information or procure assistance from another department, a duty is imposed upon the department upon which the demand is made, to make such power effective.

Under the power given to the director of each department to make rules and regulations for the distribution and performance of its business, each department has been organized into various "divisions." The names of these divisions may be ascertained by consulting the appropriation acts and they are also listed later in this chapter under the discussion of the functions of each department. These divisions follow quite closely the officers and board expressly designated in the statute.

The code provides for an assistant director in each department and the follownig outline shows the other officers, boards and departments expressly designated and provided for in the organization prescribed by the statute.

Department of Finance:

- Administrative auditor.
- Superintendent of budget.
- Superintendent of department reports.
- Tax commission (established in 1919).

Department of Agriculture:

- General manager of the state fair.
- Superintendent of foods and dairies.
- Superintendent of animal industry.
- Superintendent of plant industry.
- Chief veterinarian.
- Chief game and fish warden.
- Food standard commission.
- Board of agricultural advisers.
- Board of state fair advisers.

Department of Labor:

- Chief factory inspector.
- Superintendent of free employment offices.
- Industrial commission.
- Board of Illinois free employment office advisers.
- Board of local Illinois free employment office advisers for each free employment office.

Department of Mines and Minerals:

- Mining board.
- Miners' examining board.

Department of Public Works and Buildings:

- Superintendent of highways.
- Chief highway engineer.
- Supervising architect.
- Supervising engineer.
- Superintendent of waterways.
- Superintendent of printing.
- Superintendent of purchases and supplies.
- Superintendent of parks.
- Board of art advisers.

Board of water resource advisers.
 Board of highway advisers.
 Board of parks and buildings advisers.

Department of Public Welfare:

Alienist.
 Criminologist.
 Fiscal supervisor.
 Supervisor of charities.
 Superintendent of prisons.
 Superintendent of pardons and paroles.
 Board of public welfare commissioners.

Department of Public Health:

Superintendent of lodging house inspection.
 Board of public health advisers.

Department of Trade and Commerce:

Superintendent of insurance.
 Fire marshal.
 Superintendent of standards.
 Chief grain inspector.
 Public utilities commission.

Department of Registration and Education:

Superintendent of registration.
 Normal school board.
 Board of natural resources and conservation advisers.
 Board of state museum advisers.
 Immigrants commission.

All of these officers, boards and commissions are appointed by the governor with the advice and consent of the senate. The miners' examining board, the industrial commission, the public utilities commission, the normal school board and the tax commission are included in this organization, but these boards and commissions perform their duties without any direction, supervision or control, by the directors of their respective departments.

Department of Finance. The function of the department of finance is to provide a centralized control of expenditures of all departments responsible to the Governor, and to prepare a state budget. It has the power to prescribe a uniform system of bookkeeping, accounting and reporting for the several departments under the Civil Administrative Code, to examine into the accuracy and legality of their accounts and expenditures, and to examine the accounts of every private corporation, institution, association or board receiving appropriations from the General Assembly. It also has power to prescribe uniform rules concerning the purchase of supplies. It is required to report to the attorney general for such action as he may deem necessary, all facts showing illegal expenditures of public money or misappropriation of public property. No voucher, bill or claim, of any department under the Civil Administrative Code may be allowed without its ap-

proval and certificate. It examines and approves all vouchers, bills and claims of the several departments and such as are by law made subject to the approval of the Governor and referred to it by the Governor. It may publish, from time to time, bulletins of the work of government. It may investigate duplication of work of the departments, and their efficiency, and formulate plans for their better co-ordination.

For the preparation of the state budget, the director of finance, not later than September 15 of the year preceding the convening of the General Assembly, distributes to all departments of the state government, including the judicial department, the University of Illinois and the elective officers of the executive department, the proper blanks necessary for the preparation of the budget estimates. Not later than the first day of November each department must return these blanks showing its estimates of receipts and expenditures for the next biennium. Such statement must be accompanied by a statement in writing giving facts and explanations of reasons for each item of expenditure requested. The director of finance may make further inquiries concerning any item, and he may approve, disapprove, or alter the estimates. On or before the first day of January preceding the convening of the General Assembly, he submits to the Governor in writing the state budget, showing his estimates of revenues and appropriations for the next biennium.

The code also provides for an administrative auditor, a superintendent of department reports and a superintendent of the budget in this department.

In 1919 a tax commission was created in the department of finance composed of three members, appointed by the Governor. Their term of office is six years. The director of finance is the secretary and executive officer of the tax commission in its clerical and administrative functions, but the tax commission performs its duties in the assessment of property for taxation without any control by the director of finance. In connection with its duties concerning the assessment of property for taxation, this commission has direction and supervision of "local assessment officers," which term includes township assessors, boards of assessors, the county treasurer and boards of review.

Department of Agriculture. The function of the department of agriculture is to encourage and promote, in every practicable manner, the interest of agriculture, including horticulture, the live stock industry, dairying, cheese-making, poultry, beekeeping, forestry, fishing, the production of wool, and all other allied industries. The department of agriculture exercises the rights, powers and duties previously vested by law in the board of live stock commissioners (excepting under the act regulating the practice of veterinary medicine and surgery), the state veterinarian, the stallion registration board, state inspector of apiaries, game and fish commission, food commissioner, food standard commission, and the state entomologist. This department executes and administers the act to prevent fraud in the manufacture and sale of commercial fertilizers. It collects and publishes statistics

relating to crop production and marketing of agricultural products. It produces and manufactures biological products to be distributed to live stock producers at actual cost, and it is its duty to inquire into the causes of contagious, infectious and communicable diseases among domestic animals and means for prevention and cure. It is the duty of the department of agriculture to encourage the planting of trees and shrubs and the improvement of farm homes generally. It is also its duty to see that live stock at stock yards, breweries, distilleries and other like places, where live stock is confined, housed or fed, is properly cared for.

In this department, there is a board of agricultural advisers composed of fifteen persons; a board of state fair advisers composed of nine persons, not more than three of whom may be appointed from any one county; and a food standard commission. The superintendent of foods and dairies and two officers, designated as food standard officers, constitute the food standard commission. The code provides for a general manager of the state fair, a superintendent of foods and dairies, a superintendent of animal industry, a chief veterinarian and a chief game and fish warden in this department. For administrative purposes the following "divisions" have been organized:

General office.

Game and fish division.

Animal industry and veterinary science division.

Apiary inspection division.

Plant industry division.

Foods and dairies division.

Dairy extension division.

State fair division.

The department of agriculture is charged with the administration of the laws concerning the adulteration and inspection of food products, the sale of paints and compounds, the prevention of the spread of contagious diseases among domestic animals, and the uniform cold storage act, the pure seed act and the plant inspection act. It is also charged with the licensing of commission merchants, egg breaking establishments, egg dealers and ice cream manufacturers.

All regularly licensed veterinary surgeons employed by the department of agriculture are exempt from the classified civil service of the state.

The director of agriculture is *ex-officio* a member of the board for vocational education, and the farmers' institute.

County assessors and deputy assessors are required to collect and tabulate such agricultural information as may be required by the department of agriculture, at the time provided by law for the assessment of property. Commissioners of Canada thistles are required to send a report to the director of agriculture, who must collect and report the same to the Governor on or before December first of each year. The department of agriculture has general supervision of all measures adopted for the extermination of Canada thistles.

The department of agriculture is charged with the administration of certain funds which the General Assembly appropriates to encourage the holding of fairs by counties or agricultural societies, and the appropriations made by the state to pay its share (which may not exceed \$100 per month each) of the salary of county agricultural advisers.

The department of agriculture is directed to co-operate with the United States Bureau of Animal Industry in the extirpation of pleuropneumonia and contagious diseases among domestic animals.

Department of Labor. The department of labor is charged with the exercise of the powers and duties previously vested by law in the following offices, departments, boards and commissions: the commissioners of labor, the free employment agencies, the state factory inspector, the state board of arbitration and conciliation, and the industrial board. Its function is to foster, promote and develop the welfare of wage-earners through the improvement of working conditions, the advancement of opportunities for profitable employment, collection of statistical information, and the publication of reports relating to all departments of labor, and reports concerning the promotion of the material, social, intellectual and moral prosperity of laboring men and women. The workmen's compensation act and the arbitration and conciliation act are administered by the industrial commission without any direction, supervision or control by the director of labor.

The code provides for the appointment of a board of Illinois free employment office advisers, composed of five persons. It also provides for a board of local free employment office advisers, for each free employment office, composed of five persons on each local board. Employment offices are located in Chicago, Rockford, Joliet, Rock Island, Peoria, Springfield, East St. Louis, Bloomington, Decatur, Danville and Aurora.

The code also provides for the appointment of a chief factory inspector, a superintendent of free employment offices, a chief inspector of private employment agencies and an industrial commission, composed of five officers designated as industrial officers and corresponding divisions have been organized in this department.

Among the more important laws enforced by this department are: the child labor act, the act regulating the hours of labor for women, the act for the licensing of private employment agencies, occupational diseases act, and the health, safety and comfort of employes act.

It is the duty of the department of labor to obtain from the department of public welfare ninety days before the discharge of an inmate from any of the penal or reformatory institutions of the state, such information as may aid in obtaining employment for such inmate, the employment to be available at the time of discharge.

The director of the department of labor is *ex-officio* a member of the board for vocational education.

Department of Mines and Minerals. The function of the department of mines and minerals is to promote the technical efficiency of all persons working in and about the mines of the state and to assist them better to overcome the difficulties of mining. The department exercises the rights, powers and duties previously vested by law in the state mining board, the state mine inspectors, the miners' examining commission, and the mine fire fighting and rescue station commission. It acquires and diffuses information concerning the nature, causes, and prevention of mine accidents, and the improvement of methods, equipment and conditions of mines, with special reference to health and safety, and the conservation of mineral resources. It makes inquiries into the economic condition affecting the mining, quarrying, metallurgical, clay, oil and other mineral industries. To further these purposes, it provides bulletins, traveling libraries, lectures, correspondence work, classes for systematic instruction, and meetings for the reading and discussion of papers, and to that end co-operates with the University of Illinois.

The director of mines and minerals and four mine officers, appointed by the Governor, constitute the mining board. It is the duty of this board to hold such meetings as may be necessary for the discharge of its duties, and to conduct examinations and pass upon the practical and technical qualifications and personal fitness of all persons employed as mine inspectors, mine managers, mine examiners, and hoisting engineers. The mining board is required to prescribe uniform rules, conditions, and regulations for these examinations, and to report to the director of mines and minerals the names of persons qualified to act as inspectors of mines and of those authorized to receive certificates of competency as mine managers, mine examiners, and hoisting engineers. It supervises, controls, and directs the state mine inspection service and has the power to remove any inspector of mines, or to cancel the certificate of any mine examiner, mine manager or hoisting engineer, upon investigation of charges.

The miners' examining board exercises all rights, powers and duties exercised by the former miners' examining board under an act concerning the safety of persons employed in coal mines, which provides for the examination of all persons seeking employment in coal mines. It administers this act, in its own name, without any direction, supervision or control by the director of mines and minerals, or by the mining board.

Under the department of mines and minerals the following divisions have been organized:

General office.

Inspection.

Miners' examination.

Mine rescue and first aid.

Economic investigation.

This department is charged with the collection of statistics for, and the tabulation and printing of, the annual coal report. The state is by statute divided into twelve districts for inspection purposes, and one inspector is assigned to each district. There are six mine rescue stations in the state under the control of this department.

Upon the written request of the state inspector of mines for the district in which any county is located, the board of supervisors or commissioners, as the case may be, is required to appoint a county inspector of mines to act as assistant to the state inspector of mines and work under his supervision.

Department of Public Works and Buildings. The department of public works and buildings has the power to exercise all the rights, powers and duties previously vested by law in the state highway department, the canal commissioners, the rivers and lakes commission, the Illinois waterway commission, the Illinois park commission, Fort Massac trustees, Lincoln homestead trustees, board of commissioners of Lincoln monument grounds, and the superintendent of printing. It has extensive powers particularly in relation to the departments under the Civil Administrative Code. It is empowered to make contracts for and superintend the telegraph and telephone service of these departments, to purchase and supply all fuel, light, water, and other like office and building services, all furniture, general office equipment and general office supplies (except those distributed through the office of the secretary of state) for the several departments under the code; all clothing, instruments and apparatus, subsistence and provisions for the charitable, penal and reformatory institutions; and all necessary tools, machinery, supplies and materials, to be used by the state in the construction of state highways. It is further empowered to prepare general plans, preliminary sketches, and estimates for public buildings to be erected by any department, plans for the development of grounds and buildings under the control of any department, and plans for the construction and perfection of all systems of sewerage, drainage, and plumbing for the state. It has general supervision over the erection and construction of public buildings erected for any department, and may make contracts for and supervise the construction and repair of buildings under the control of any department. It has the power to erect, supervise, and maintain all public buildings and memorials erected by the state except where other supervision and maintenance is provided for by law. It has power to lease storerooms and office space in buildings for the use of the several departments under the Civil Administrative Code and has general supervision and care of these storerooms and offices. It may also lease unproductive and unused lands or other property under the control of any department.

The code expressly designates and provides for the appointment of the following administrative officers in the department of public works and buildings:

Superintendent of highways, chief highway engineer, supervising architect, supervising engineer, superintendent of waterways, superintendent of printing, superintendent of purchases and supplies, and superintendent of parks.

In order to aid in the administration of its various powers, the following divisions have been organized in this department:

Highways division.

Architecture division.

Engineering division.
 Waterways division.
 Printing division.
 Purchases and supplies division.
 Parks division.

Four advisory and non-executive boards in the department of public works and buildings are created by the code. They are the board of art advisers, the board of water resource advisers, the board of highway advisers, and the board of parks and buildings advisers. It is the function of the board of art advisers, which is composed of eight persons, to advise relative to the artistic character of state buildings, works and monuments, and any work of a permanent character intended for decoration or commemoration. The board of water resource advisers, composed of five persons, advises relative to riparian rights of the state, and the conservation, use and development of water resources. The board of highway advisers, composed of five persons, advises relative to the construction, improvement and maintenance of state highways. The board of parks and buildings advisers, composed of five persons, advises relative to the construction, improvement and maintenance of state parks, buildings and monuments.

The director of public works is authorized, with the consent in writing of the Governor, to acquire by private purchase or by condemnation under the eminent domain act, the necessary lands for the public grounds and buildings for the departments under the code. All moneys received by him from rents, sales or leases of property or from any other source in connection with the management of the Illinois and Michigan Canal must be paid into the state treasury and placed by the state treasurer in a special fund to be known as "The Illinois and Michigan Canal Fund."

Two large bond issues have recently been authorized in this state—\$60,000,000 for the construction of state aid roads, and \$20,000,000 for the construction of a waterway between Lockport and Utica. This department is charged with the administration of both of these funds.

The duties of this department include the general supervision of Ft. Massac Park, Ft. Chartres Park, Starved Rock State Park, the Lincoln Monument, the Lincoln Homestead and the Douglas Monument Park. The largest state park is at Starved Rock and it contains over 1,000 acres. The General Assembly in 1919 authorized this department to acquire Old Salem State Park, and to construct monuments to Governors Palmer, Coles and Yates. With the advice of the centennial building commission the department has supervision of the construction of the new centennial memorial building in Springfield.

An important law in relation to state contracts was enacted in 1915. Under it the department of public works and buildings has an effective supervision over state printing.

The state highway division exercises some control over the choice of county superintendents of highways in this state. The county board submits to it a list of from three to five persons, and the highway commission determines by a competitive examination the person or persons best fitted for the position and certifies the names to the county board, which then makes the appointment. If no qualified person appears

upon the first list, the county board is required to submit a second list and if no one from it is qualified, the board may employ a non-resident of the county who has passed a satisfactory examination. The county superintendent of highways performs various duties that are subject to the rules and regulations of the state highway commission. Various duties are imposed upon the state highway division by the federal aid road act, in connection with the allotment of federal funds to the state. The state highway division must submit project statements to the secretary of agriculture of the United States and if approved by him, and all other conditions have been satisfied, the state may receive the benefit of the act.

Department of Public Welfare. The department of public welfare has the power to exercise all the rights, powers and duties previously vested by law in the following boards, commissions, officers, institutions, and offices, their assistants, other officers and employes: the board of administration, the state deportation agent, the state agent for the visitation of children, Illinois state penitentiary at Joliet, southern Illinois penitentiary, Illinois state reformatory, board of prison industries, board of classification, and the board of pardons.

A board of public welfare commissioners, composed of five persons, is included in the organization of this department, whose function it is to investigate the condition and management of the whole system of charitable, penal and reformatory institutions of the state, to make special investigations when directed to do so by the Governor, to inquire into the equipment and management of all institutions and organizations coming under the supervision and inspection of the department of public welfare, and to collect and publish annually statistics relating to insanity and crime.

The Civil Administrative Code creates the following officers in the department of public welfare: Alienist, criminologist, fiscal supervisor, superintendent of charities, superintendent of prisons, superintendent of pardons and paroles. The alienist is in charge of the state psychopathic institute in Kankakee and the criminologist is in charge of the juvenile psychopathic institute in Chicago. The department has organized a division of visitation of adult blind and a division of visitation of children. It has also appointed a superintendent of social service and a superintendent of occupational therapy. In addition to the two psychopathic institutes, there are twenty-three state institutions under the control of this department, namely:

- Elgin State Hospital, Elgin, (insane).
- Kankakee State Hospital, Kankakee, (insane).
- Jacksonville State Hospital, Jacksonville, (insane).
- Anna State Hospital, Anna, (insane).
- Watertown State Hospital, Watertown, (insane).
- Peoria State Hospital, Peoria, (insane).
- Chester State Hospital, Chester, (insane).
- Chicago State Hospital, Dunning, (insane).
- Alton State Hospital, Alton, (insane).
- Lincoln State School and Colony, Lincoln, (feeble-minded).

Dixon State Colony, Dixon, (epileptic).
 Illinois School for the Deaf, Jacksonville.
 Illinois School for the Blind, Jacksonville.
 Illinois Industrial Home for the Blind, Chicago.
 Illinois Soldiers' and Sailors' Home, Quincy.
 Soldiers' Widows' Home of Illinois, Wilmington.
 Illinois Soldiers' Orphans' Home, Normal.
 Illinois Charitable Eye and Ear Infirmary, Chicago.
 St. Charles School for Boys, St. Charles.
 State Training School for Girls, Geneva.
 Illinois State Penitentiary, Joliet.
 Southern Illinois Penitentiary, Menard.
 Illinois State Reformatory, Pontiac.

The General Assembly has provided for the construction of a surgical institute for children, a state farm for first offenders and a state sanitarium for women. The department of public welfare is charged with the licensing, inspection and regulation of maternity homes and boarding homes for children.

Superintendents, wardens and chaplains of the state charitable, penal, and correctional institutions are exempt from civil service.

The superintendent of public instruction is charged with the duty of visiting certain of these institutions and inquiring into their educational facilities. The officers of these institutions are required to make reports to him concerning educational matters. The administrative officers of the various institutions coming under the state institution teachers' pension and retirement fund are required to transmit quarterly to the state treasurer the sums retained from teachers' salaries in accordance with the provisions of the act and to make an annual statement to him of all money so retained.

The county clerk of each county is required to transmit the reports of the overseers of the poor to the department of public welfare.

Department of Public Health. The department of public health exercises all the rights, powers and duties previously vested by law in the state board of health, its secretary and executive officer, other officers and employes, except those vested under the acts regulating the practice of medicine and embalming. It makes examinations into nuisances and questions affecting the security of life and health in any locality of the state, investigates and inquires into the causes of disease, especially epidemics, and causes of mortality, and makes sanitary, sewage, health, and other inspections for the charitable, penal, and reformatory institutions, and the normal schools. It acts in an advisory capacity relative to public water supplies, water purification works, sewerage systems, and sewerage treatment works, and may make and enforce rules and regulations concerning nuisances growing out of their operation. It maintains laboratories for the examination of milk, water, sewage, wastes, and other substances, and to make necessary diagnosis of diseases. It purchases and distributes free of charge to citizens of the state, various sera, vaccines, and prophylactics, of recognized efficiency in the prevention and treatment of communicable dis-

eases. It collects and preserves information relative to mortality, morbidity, disease and health. It publishes and distributes reports and bulletins concerning the prevention of disease, and the health and sanitary conditions of the state.

The department of public health has the power to inspect from time to time all hospitals, sanatoria, and other institutions, conducted by county, city, village or township authorities, and report their sanitary needs to the official authority having jurisdiction over them. It is required to keep informed of the work of local health officers and agencies throughout the state, and to supervise, aid, direct, and assist them in the administration of the health laws.

The code provides for a superintendent of lodging house inspection and a board of public health advisers, composed of five persons. The following divisions have been organized in the department of public health:

Executive division.

Division of communicable diseases.

Division of tuberculosis.

Division of sanitation.

Division of vital statistics.

Division of child hygiene and public health nursing.

Division of surveys and rural hygiene.

Division of diagnostic laboratories.

Division of hotel and lodging house inspection.

Division of public health instruction.

Division of social hygiene.

Division of biological and research laboratories.

Under the occupational diseases act the department of public health is required to furnish blanks to physicians for examinations of employes for vocational and occupational diseases and to transmit such reports to the division of factory inspection of the department of labor.

When the local authorities neglect or refuse to enforce rules and regulations of the department of public health promptly and efficiently in the suppression of contagious or infectious diseases, the department may enforce such measures, and all necessary expenses so incurred must be paid by the city or village for which the service is rendered. It is the duty of the state's attorney in each county to prosecute all persons in the county violating or refusing to obey the rules and regulations of the department of public health. Prosecutions may be instituted by the department and all fines or judgments collected or received must be turned over to the state treasurer.

An act passed in 1915 concerning the registration of births and deaths makes the director of public health superintendent of such registration, and vests the administration of the law in the department of public health. The clerks of cities, villages, and incorporated towns are made the local registrars of vital statistics. Certificates of births and deaths registered by them must contain at least the items of the standard certificate approved and adopted by the United States Bureau of the Census. In cases where death occurs without medical attendance the coroner is required to furnish such information as may be required by the department of public health in order to classify the cause

of the death. All physicians, midwives, undertakers and sextons, are required to register once each year with the local registrar and he is directed to send a list of those registered with him to the department of public health within thirty days after the end of the calendar year. Superintendents of hospitals, almshouses, and other institutions treating persons for disease, are required to give such information concerning inmates as may be prescribed by this department.

The department of public health is required to compile and publish an annual report of births and deaths with such matter as will serve to promote public health and the general welfare of the citizens of the state. At the end of each calendar year it certifies to the county clerk of each county the number of births, stillbirths, and deaths properly registered in the county, with the names of the persons entitled to the prescribed fees for registration work, and the amount due each at the rate fixed in the act. The county clerk is directed to issue his warrant on the county treasurer for such fees, and the county treasurer to pay the same upon presentation. It is made the duty of all boards of county commissioners or boards of supervisors to appropriate such amounts as may be necessary to carry out this act. The local registrars are charged with the enforcement of this act under the direction and supervision of the department of public health. This department has the power to investigate cases of irregularity or violations of the law. When the department deems it necessary, it has the power to report cases to the state's attorney who is directed to initiate proceedings for the alleged violation.

Under an act passed in 1917 authorizing the organization of public health districts and the maintenance of a public health department by such districts, it is made the duty of the department of public health to prepare a list of eligibles for appointment as public health officers. This list is selected by open, competitive examination, of which notice must be given in the "official newspaper" selected by the department of public works and buildings. It is the duty of the district Public health officers to enforce, and observe the rules, regulations, and orders of the department of public health and all state laws concerning public health.

Under an act passed in 1905, it is the duty of the department of public health to appoint one agent in the county seat of each county, to sell certified diphtheria anti-toxin to persons able to purchase it. Others are to be supplied with it at the expense of the county upon an order from the overseer of the poor.

Boards of examiners of plumbers in cities of 10,000 or more are directed to prescribe rules and regulations for materials, constructions, alterations, and inspection of all plumbing and sewerage with the advice of the department of public health.

The department of public health is required to approve rules adopted by the department of registration and education, regulating the sanitary conditions of barber shops.

Department of Trade and Commerce. The department of trade and commerce is given power by the terms of the law to exercise

through the public utilities commission all the rights, powers and duties vested by law in the state public utilities commission, its officers and employees. It also exercises all the rights, powers, and duties vested by law in the insurance superintendent, the grain inspection service, the inspectors of automatic couplers and power brakes on railroad locomotives, and the state fire marshal, their assistants, officers and employees. It is charged with the execution of laws relating to weights and measures, standards of quantity or quality for commodities, and the safety and purity of illuminating oils and gasolines.

The code creates the following officers in the department of trade and commerce: Superintendent of insurance, fire marshal, superintendent of standards, chief grain inspector, the public utilities commission, which consists of five officers, designated public utility commissioners, and the secretary of the public utilities commission. The public utilities commission exercises all rights, powers and duties vested by law in it without any direction, supervision or control by the director of trade and commerce.

For convenience of administration, the director has designated the various activities of the department of trade and commerce as follows:

General office.

Division of insurance.

Division of grain inspection at Chicago.

Division of grain inspection at East St. Louis.

Division of fire prevention.

Division of public utilities.

Division of standards.

Division of small loans.

This department is charged with the enforcement of the insurance laws of the state, the reporting of violations of insurance and fire prevention laws to the attorney general for prosecution, the licensing of insurance agents, and the collection of taxes and fees imposed upon insurance corporations.

The federal government, in order to make its supervision over grain inspection effective, has adopted the policy of licensing grain inspectors employed by the state, and the state public utilities commission has adopted the federal standards for wheat and corn. Actuaries and examiners of insurance companies in this department are exempt from civil service.

The director of trade and commerce is ex-officio a member of the board for vocational education. In the administration of the laws concerning weights and measures the department of trade and commerce is required to submit the state standards of weights and measures to the national bureau of standards for certification at least once in ten years. The enforcement of the standards is left to the county officials, the county clerk being ex-officio county sealer. The department is also charged with the licensing of small loan brokers. Highway commissioners are required to erect and maintain such signs as the public utilities commissioners may prescribe at extra-hazardous grade crossings.

Department of Registration and Education. The department of registration and education has power to exercise the rights, powers and duties previously vested by law in the board of education of the state of Illinois, the boards of trustees of the normal schools at Carbondale, DeKalb, Charleston and Macomb; the board of veterinary examiners and the state board of live stock commissioners, relating to the practice of veterinary medicine and surgery; the boards of examiners of horseshoers, architects, structural engineers, dentists, nurses and barbers; the state board of health, relative to the practice of medicine, midwifery and embalming; the state board of pharmacy, and the state board of optometry.

It is also the function of the department of registration and education to investigate the natural resources of the state, to prepare plans for the conservation and development of such resources, and to that end cooperate with other departments of the state, other states, and the United States. The department is empowered to conduct a natural history survey of the state, to investigate the entomology of the state, to study the geological formation of the state with reference to its resources of coal, ores, clays, building stones, cement, gas, mineral and artesian water, and other products, to collect facts and data concerning the water resources of the state; to determine standards of purity of drinking water for the various sections of the state; and to make analysis of samples of water from municipal or private sources.

The department of registration and education is empowered to publish from time to time, reports covering the entire field of botany and zoology of the state; articles on injurious and beneficial insects of the state; topographical, geological and other maps to illustrate the resources of the states; and the results of its investigations of the waters of the state.

The department is also empowered to distribute to the various educational institutions of the state, specimens, samples and materials collected by it after they have served the purposes of the department, and to supply such institutions with natural history specimens. It is directed to maintain a state museum, and to collect and preserve objects of scientific and artistic value. It is its duty to investigate, to instruct the people by lecture, demonstration or bulletins concerning, and to conduct experiments with respect to methods of preserving and protecting their property and health against injuries by insects. The department is directed to cooperate with the United States geological survey in the preparation and completion of a contour topographical survey and map.

The management of the normal schools is vested in a normal school board, composed of nine officers, together with the director of registration and education, who is ex-officio chairman of the board, and the superintendent of public instruction who is ex-officio secretary. This board acts independently of the supervision, direction or control of the director or any other officer of the department of registration and education. It is empowered to examine into the conditions, management and administration of the state normal schools and to make rules, regulations and by-laws for the management and govern-

ment of these schools. It is its duty to visit and inspect each normal school at least once annually. It has the power to employ, and for good cause, remove, the presidents of the state normal schools, and all necessary professors, teachers, instructors, and employes, and fix their salaries; to prescribe the course of study to be followed, and the textbooks and apparatus to be used, and to issue diplomas and confer degrees. It succeeds to and administers all trusts and trust property belonging to or pertaining to any of the state normal schools.

The code also provides for a superintendent of registration and two other advisory and non-executive boards, the board of natural resources and conservation advisers consisting of seven persons, and the board of state museum advisers, consisting of five persons.

The board of natural resources and conservation acting through five or more sub-committees each of which is composed of the director of registration and education, the president of the University of Illinois or his representative, and an expert adviser specially qualified in each of the fields of investigation, is directed to consider and decide all matters pertaining to natural history, geology, water and water resources, forestry and allied research, investigational, and scientific work. This board has the power to select and appoint without reference to the state civil service law, members of the scientific staff, prosecuting such work. It is directed to cooperate with the University of Illinois in the use of this scientific staff and to cooperate with the other departments in prosecuting such research, investigational and scientific work as may be useful in the work of any department.

The board of state museum advisers advise the director of registration and education in all matters pertaining to maintenance, extension and usefulness of the state museum.

An immigrants commission, composed of five persons, one of whom is the director of registration and education, was added to this department in 1919. It is empowered to make a survey of the immigrant, alien born and foreign speaking people of the state, of their distribution, conditions of employment, and standards of housing and living; to examine into their economic, financial and legal customs, their provisions for insurance and other prudential arrangements, their social organization and their educational needs. It is directed to cooperate with state and local officials, and with immigrant or related authorities of other states and the United States.

For purposes of administration the director has organized the department as follows:

State museum—

Board of state museum advisers.

Scientific surveys—

Board of natural resources and conservation advisers.

Natural history survey.

Water survey.

Geological survey.

Entomological survey.

Normal schools—

Normal school board.
 Illinois state normal university, Normal.
 Southern Illinois state normal university, Carbondale.
 Northern Illinois state normal school, DeKalb.
 Eastern Illinois state normal school, Charleston.
 Western Illinois state normal school, Macomb.

Division of registration—

Examining committees:

Architects.
 Barbers (12 district committees).
 Chiropodists.
 Dentists.
 Embalmers.
 Horseshoers.
 Medical practitioners.
 Nurses.
 Optometrists.
 Pharmacists.
 Structural engineers.
 Veterinarians.

Immigrants commission.

The presidents, deans, teachers, scientific staff of the normal schools and one private secretary for the president of each normal school are exempt from civil service.

Upon the action and report in writing by a majority of certain persons designated for this purpose for each profession, trade or occupation, the director of registration and education has the power to exercise various functions in connection with the several laws regulating the trades, professions and occupations enumerated above. He can exercise these functions only upon the action and report in writing by a majority of the persons designated for each profession, trade or occupation, by the director to assist in the administration of the laws. Among these powers thus exercised by the director of registration is the power to conduct examinations to determine the qualifications and fitness of applicants, to prescribe standards of preliminary education necessary for admission to these examinations, to issue licenses and to act upon their revocation or renewal.

The director of registration and education is ex-officio chairman of the board of vocational education.

The statutes provide for a board of examiners of plumbers in every city, town or village of the state having a population of ten thousand or more, and the department of registration and education is charged with the enforcement of the act creating such boards and providing for the licensing of plumbers.

V. DESCRIPTION OF THE FUNCTIONS OF BOARDS, COMMISSIONS, DEPARTMENTS AND OFFICES NOT CREATED BY THE CONSTITUTION AND NOT UNDER CIVIL ADMINISTRATIVE CODE.

There are a number of boards, commissions, departments and offices in this state which are not created by the constitution, and are not under the provisions of the civil administrative code. For the purposes of this bulletin, these governmental agencies may be classified according to the method of appointment, as follows:

1. Appointment by the Governor—
 - Adjutant General.
 - Commission for the Uniformity of Legislation in the United States.
 - Penitentiary Commission.
2. Appointed by the Governor with the advice and consent of the Senate—
 - Civil Service Commission.
 - Court of Claims.
 - Historical Library.
 - Lincoln Park and the West Chicago Park Commissioners.
3. Ex-officio—
 - Board for Vocational Education.
 - Board of Commissioners of the State Library.
 - Joint Legislative Reference Bureau.
 - Primary Canvassing Board.
 - State Canvassing Board.
 - Tax Levy Board.
4. Partly ex-officio and partly appointed by the Governor—
 - Board of Trustees of the Illinois State Teachers' Pension and Retirement Fund.
 - Board of Voting Machine Commissioners.
 - Centennial Building Commission.
5. Partly ex-officio and partly elected by the people—
 - Board of Trustees of the University of Illinois.
6. Partly ex-officio and partly appointed by an ex-officio board—
 - Library Extension Commission.
7. Partly ex-officio and partly from officers and members of various societies—
 - Farmers' Institute.
8. Partly ex-officio and partly appointed by a constitutional state officer—
 - Teachers' Examining Board.
9. Appointed by the University of Illinois—
 - Board of Examiners in Accounting.

1. Appointed by the Governor.

Adjutant General. The adjutant general is appointed by the commander-in-chief (the Governor) and he is ex-officio chief of staff, inspector general, quartermaster general, commissary general, paymaster general, and chief of ordnance of the state forces. He has the rank of brigadier general. He and his assistants must be men of military training and experience and each must have had service as an officer of not less than five years, at least three of which shall have been in the line. On the recommendation of the adjutant general, the Governor appoints from officers or ex-officers of the national guard or naval reserve, not below the rank of captain or lieutenant, the following assistants to the adjutant general: One adjutant general, one inspector general, one assistant quartermaster and one ordnance officer, each with rank of colonel, and one assistant quartermaster with rank of captain.

The adjutant general, the assistant adjutant general, the assistant quartermaster general and the assistant quartermaster are all required to reside at the state capitol and give their entire time to their military duties.

An adjutant general with the rank of colonel is chief assistant to the adjutant general, and performs the duties of the adjutant general, in the event of his disability or absence from the state. The department also has one lieutenant colonel and three majors. The adjutant general receives a salary of \$7,000 per annum.

The Governor makes all appointments in the commissioned rank of the national guard and the naval militia. Commissions evidencing all appointments must be signed by the Governor and attested and issued by the adjutant general. All positions in the military service are exempt from civil service.

Commission for the Uniformity of Legislation in the United States. This commission was established by an act passed in 1907. It consists of five men appointed by the Governor for a term of four years. Its function is to ascertain the best means of effecting uniformity in the laws of the states. Its duties are to examine the subjects of marriage and divorce, commercial paper, insolvency, form of notarial certificates, descent and distribution of property, acknowledgement of deeds, execution and probation of wills, and other subjects on which uniformity is desirable, to represent Illinois in conventions and congresses of like commissions, and to devise and recommend such other courses of action as shall best accomplish the purposes of the act. The commissioners are required to report biennially to the Governor at least thirty days before the convening of the General Assembly, and the Governor must submit such report with his recommendations to the General Assembly.

Penitentiary Commission. This commission was established in 1907. It consists of three members appointed by the Governor and he has the power to fill vacancies occurring in the commission. The commissioners serve without pay but receive their reasonable and necessary expenses. They elect one of their number president and another secretary.

The function of this commission is to select, plan and supervise the construction of a re-located Illinois state penitentiary and Illinois asylum for insane criminals at or near the city of Joliet, Illinois. They are given the right to acquire title to the land by condemnation under the eminent domain laws of the state. They are authorized to employ architects, superintendents, agents, overseers and workmen and make all necessary contracts. If they deem it advisable they may let by contract the construction of the buildings to the lowest and best responsible bidder.

In the construction of the penitentiary the commission is required to use as far as possible the labor of convicts confined in the Illinois state penitentiary. Whenever such convicts are employed, the warden of the Illinois state penitentiary is directed to provide for their care and custody.

The conveyances of the site of these buildings must be passed upon and approved by the attorney general, and the deeds must be filed in the office of the secretary of state. The auditor is directed to pay out money appropriated upon vouchers signed by a majority of the commission.

2. Appointed by the Governor with the Advice and Consent of the Senate.

Civil Service Commission. The state civil service commission was established by an act passed in 1905. The commission is composed of three members appointed by the Governor with the advice and consent of the senate for a six year term. Not more than two members may be of the same political party. The Governor may remove any commissioner for want of moral character, incompetency, neglect of duty, or malfeasance in office. He must at the same time report in writing any such removal to the senate with his reasons therefor and if the senate is not in session this report is filed with the secretary of state, who transmits it to the senate within ten days after the commencement of the next session.

Each commissioner receives \$3,000 per annum and necessary traveling expenses. Commissioners may hold no other lucrative office or employment under the state, the United States, or any political sub-division thereof. The commissioners select one of their members as president, who receives \$1,000 additional salary per annum. They meet in Springfield at least once in each month except August.

The function of this commission is to regulate the selection of persons for appointive positions in the state service. The following offices, positions, and places of employment are exempt from the classified service of the state: Elective officers; judicial officers; employes of the General Assembly; all positions in the military service; notaries public; officers appointed by the Governor with the advice and consent of the senate; one private secretary and one stenographer for each elective officer in the executive department; one private secretary for the director of each department under the Civil Administrative Code, for the president of each normal school and for the president

and each dean of the University of Illinois; regular and special assistants, law clerks, special investigators and special attorneys in the attorney generals office; all presidents, deans, teachers and scientific staff of the University of Illinois and of the state normal schools; employes at the executive mansion; superintendent and assistant superintendent of capitol building and grounds; bank examiners, examiners of building and loan associations, insurance actuaries, and examiners of insurance companies; superintendents, wardens and chaplains, in the state charitable, penal and correctional institutions; clerks, watchmen and policemen in the offices of the elective officers; students employed at the University of Illinois and the normal schools under civil service rules without examination or certification; technical assistants, clerks and stenographers of the vocational education board.

The law requires the appointing officers to make requisition upon the civil service commission for each position in the classified service to be filled, and the civil service commission certifies to him the name and address of the person standing highest upon the list of eligibles, as determined by competitive examinations.

The commission is directed to classify all offices and places of employment with the above exceptions. The offices and places so classified constitute the classified service and no appointment may be made except under the provisions of the law. The commission is given the power to investigate the conditions of the classified service in regard to efficiency, and is authorized to make recommendations to the officer in charge for improving the service, and in case its suggestions are not carried out, to report the fact to the Governor. It is also authorized to standardize the employment in all grades of the public service.

The civil service commission is directed to make a report to the Governor on or before the fifteenth day of January of each year showing its own action, rules in force, the practical effects thereof, and suggestions for the effectual accomplishment of the purposes of the act. The Governor may require a report from the commission at any time. The commission has power to compel the attendance and testimony of witnesses, the production of books and papers, at hearings and investigations. It employs a chief examiner who is ex-officio secretary of the commission and works under its direction. He superintends all examinations. His salary is \$3,500 per annum. Boards of examiners or trial boards (not in the official service of the state) receive not to exceed \$5.00 per diem and necessary traveling expenses.

The Governor may not approve a voucher for services of any person employed in violation of the provisions of this act. The commission certifies to the state auditor all appointments and removals in the classified service and he may only approve salaries of lawful employes upon certification of the civil service commission.

The validity of the civil service act was attacked in the case of *People v. McCullough*, 254 Ill., 9, (1912). The question involved was whether the act applied to certain employes in the offices of the elective officials. This was a suit of mandamus to force the auditor to issue to the relators, who were employes in the office of the secretary of state, warrants on the state treasurer for the amounts due them, with-

out the certification of the civil service commission as required by law. The relators contended that the certificate of the civil service commission was unnecessary for the reason that the civil service act as applied to officers whose offices were created by the constitution was null and void for two reasons: First, because it violated article 3 of the constitution of Illinois which declares that the powers of government are divided into three distinct departments—legislative, executive and judicial—and prohibits any department from exercising any power belonging to either of the others. In regard to this matter, the Supreme Court held that the civil service act as applied to the office of the secretary of state was not in violation of article 3, because the appointment, whether made by the secretary of state or the civil service commission, was made by the executive department. Second, it was contended that the civil service law in limiting the power of the secretary of state to make appointments was in violation of section 1 of article 5 of the Illinois constitution which names the officers who shall comprise the executive department, and provides that the secretary of state, together with the other state officers, shall perform such duties as may be prescribed by law. The result of the court's action was to apply the civil service act to the positions of assistant chief clerk, corporation clerk and bookkeeper in the office of the secretary of state, on the ground that such application was not an unlawful interference by the legislative department with the constitutional powers and duties of the office of secretary of state, although the court was badly divided. In *People v. Brady*, 275 Ill., 261 (1916), an employee in the office of the clerk of the Supreme Court sought to avoid the application of the civil service law, urging the same objections which had been made in the *McCullough* case. The court rejected both objections, and said: "The mention of an officer in the constitution does not place him above the law and give him the same control of his office as of his private business. He is a public officer and the business of his office must be conducted according to law. The legislature may not deprive him of the power conferred upon him by the constitution, but it has power to make reasonable regulations in regard to the means by which, and the time, place and manner in which, the duties of such constitutional officer shall be performed. The duties of a clerk may be performed by a deputy, and it is not an unreasonable regulation to prescribe reasonable qualifications for persons who may be employed as deputies and removal from office for a lack of efficiency in the performance of its duties."

Court of Claims. A body called the court of claims, but not a part of the judicial organization of the state, was recreated under an act passed in 1917. The old court of claims was abolished by the Civil Administrative Code. The court consists of a chief justice and two members appointed by the Governor with the advice and consent of the senate for a four-year term commencing the second Monday in January next after the election of a Governor. They each receive a salary of \$1,500 per annum, payable monthly.

The function of the court of claims is to hear and determine private claims against the state and to hear and give its opinion on any controverted questions of claim and demand referred to it by any offi-

cer of the state. It may also hear and determine the liability of the state for accidents to its employes in accordance with the workmen's compensation act, the industrial commission being relieved from any duty with reference thereto.

The court has power to make rules for practice and procedure before the court, to compel the attendance of witnesses and the production of books and papers. The concurrence of two members is necessary to a decision in any case. The court files a brief written statement of the reasons for its determination in each case and of its awards. The authority conferred on the court of claims is by statute made exclusive, and the statute further provides that no appropriation to pay claims shall be made by the legislature unless an award has been made by the court of claims.

The secretary of state is ex-officio secretary of the court of claims. He is directed to compile and publish annually the opinions of the court. The attorney general appears for and represents the interests of the state in all matters before the court.

Illinois State Historical Library. This library was established by an act passed in 1889. It is under the control and management of three trustees, appointed by the Governor, by and with the consent of the senate for a two-year term. They must be well versed in the history of the state and qualified by habit and disposition to discharge the duties of their office. They receive no compensation except actual expenses while in the discharge of their duties, to be paid upon itemized accounts, approved by the Governor.

The trustees have power to procure all books, pamphlets, manuscripts, monographs, and other material bearing upon the political, physical, religious or social history of the state of Illinois. The Illinois state historical society is a department of the historical library and the trustees are authorized to pay certain expenditures for the historical society out of the historical library appropriations. All expenditures are paid by proper vouchers approved by the Governor, and the auditing of the accounts of appropriations to the state historical society is subject to the approval of the Governor. The trustees have power to select a librarian whose salary is \$3,000 per annum.

Lincoln Park and West Chicago Park Commissioners. The Governor appoints the West Chicago park commissioners under an act passed in 1869, and the Lincoln park commissioners under an act passed in 1871. The appointment of these commissioners is made with the advice and consent of the senate. The park districts, whose affairs are managed by these commissioners, are located in the city of Chicago. The number of commissioners for each park district is seven and they are appointed for five year terms.

3. Ex-officio.

Board for Vocational Education. This board was established by an act passed in 1919. It is composed of the superintendent of public instruction, the director of registration and education, the director of agriculture, the director of labor, and the director of

trade and commerce, ex-officio. The director of registration and education is ex-officio chairman of this board, and the superintendent of public instruction is its executive officer.

The board is to co-operate with the federal government in the administration of the federal vocational education law, to promote the establishment of vocational classes, and to distribute the vocational education fund allotted to this state by congress. The board is empowered to appoint, without reference to the civil service law, such technical assistants, clerks and stenographers as may be necessary. The state treasurer is the custodian of the vocational education funds allotted to this state by congress.

Board of Commissioners of the State Library. The state library was established in 1845. The Governor, secretary of state, and superintendent of public instruction constitute the board of commissioners for the management of the state library, of which board the Governor is president.

The function of the commissioners is to make and carry into effect all rules and regulations for the care, arrangement and use of the books, maps, charts, papers, and furniture of the state library. Books may be taken from the library by members of the General Assembly during sessions, justices of the Supreme Court, and the Governor and officers of the executive department.

The secretary of state is librarian ex-officio, and he has the custody and charge of the library. He is required to prepare an alphabetical catalogue of the library, and report the same to the board of commissioners who are directed to publish it. Before the auditor may issue his warrant to any member or officer of the General Assembly for his services during the session, he must be satisfied that such member or officer has returned all books to the state library, and settled all accounts for injuring books or otherwise.

Joint Legislative Reference Bureau. The joint legislative reference bureau was established by an act passed in 1913. It is composed of the Governor, and chairman of the committees on appropriations and judiciary of the house of representatives and the senate. The Governor is ex-officio chairman of the bureau. The members of the bureau receive no compensation, but they are entitled to actual and necessary expenses incurred in the performance of their duties. They meet during the regular and special sessions of the General Assembly and at such other times as they may determine.

The function of the bureau is to collect and keep in the state capitol such laws, reports, books, periodicals, documents, catalogues, check-lists, digests and summaries of the laws of other states on current legislation as may aid the members of the General Assembly in the performance of their official duties. The bureau is required to publish a digest or summary of all bills and resolutions introduced in each branch of the General Assembly, and to furnish copies to each member on Monday of each week during the session of the General Assembly. It furnishes legal assistance to members of the General Assembly upon their request, in the preparation of bills, resolutions and amendments.

The legislative reference bureau appoints a secretary, who is required to give his entire time to the duties of the office, and whose salary may not exceed \$5,000 per annum. It also appoints other officers and employes and fixes their compensation.

The secretary of state is required to provide the bureau with suitable offices, convenient to the meeting place of the General Assembly, and with the necessary furniture, stationery and supplies. The state library is directed to co-operate with the bureau and make the facilities of the library accessible to it, and loan it material. All proper expenses are paid from its appropriations upon itemized vouchers, signed by the secretary and approved by the Governor.

Primary Canvassing Board. This board was created in 1910 by an act to provide for the holding of primary elections by political parties. In case of the nomination of candidates for offices, including the presidential primary, and that for state central committeemen and delegates and alternate delegates to national nominating conventions, for which elections certified tabulated statements of returns are filed with the secretary of state, the returns are canvassed by the Governor, secretary of state and state treasurer.

State Canvassing Board. The state canvassing board is composed of the secretary of state, auditor, treasurer and attorney general. This board, or any two of them, in the presence of the Governor proceeds within twenty days after the election, and sooner if all the returns are received, to canvass the votes for United States senators and representatives, judges and clerks of the Supreme Court, judges of the circuit courts, members of the General Assembly and trustees of the University of Illinois. The persons having the highest number of votes are declared elected. In case of a tie, the secretary of state, in the presence of the other officers and the Governor, decides by lot which of such persons is elected. The Governor is directed to give those elected a certificate of election or commission, and he issues a proclamation of the results of the canvass. At the same time and in the same manner the votes on constitutional amendments and other propositions voted on by the entire state are canvassed. The abstracts of votes which this board canvasses are prepared by the county clerks, assisted by two justices of the peace of the respective counties, and sent to the secretary of state. Two copies of the abstracts are sealed in separate envelopes and both are sent to him, one addressed to the "speaker of the House of Representatives," and the other to the "secretary of state." The canvassing of votes by this board is not exclusive in many cases. By article V, section 4 of the constitution, the speaker of the House of Representatives opens and publishes the returns of every election for elective state officers of the executive department, in the presence of a majority of the two houses.

Tax Levy Board. The Governor, auditor and treasurer are required annually, on the completion of the assessment and equalization of property, to ascertain the rate per cent required to produce the amount of taxes levied by the General Assembly. When this rate is ascertained, the auditor certifies to the county clerks the proper rates per cent to be levied and collected as state taxes.

4. Partly ex-officio and partly appointed by the Governor.

Board of Trustees of the Illinois State Teachers' Pension and Retirement Fund. The Illinois state teachers' pension and retirement fund was established by an act passed in 1915. It is administered by a board of trustees consisting of five members, the superintendent of public instruction and the state treasurer, ex-officio, and three members appointed from those under the pension system, by the Governor with the advice and consent of the Senate for a term of three years. Members of the board receive no compensation except necessary expenses incurred in attending the meetings. If the board elects one of its members secretary, he receives compensation for his services. The superintendent of public instruction is ex-officio president, and the state treasurer is ex-officio treasurer of the board. The state treasurer is liable on his official bond for the proper performance of his duties and the conservation of this fund. The board of trustees meets regularly four times a year.

The function of the board of trustees is to administer the teachers' pension fund, to invest the same upon the approval of the state treasurer, and to make payment from the fund of the pensions and annuities granted in the act. The board of trustees appoints a secretary and fixes his compensation, which, with all other expenses is paid out of the teachers' pension fund. The auditor is authorized to pay all salaries, annuities and expenses upon the presentation of vouchers approved by the president and secretary of the board of trustees. Annuities are paid quarterly.

The board of trustees is directed to report annually at the first meeting after June 30. This report is transmitted to the superintendent of public instruction, and included in his biennial report to the Governor. The board of directors, board of education or other governing body of public schools in each district coming under the provisions of this act, is required each year within seven days after June 30, to forward to the state treasurer a statement of moneys retained from salaries in accordance with this act, together with such money. At the same time a copy of this report must be sent to the county superintendent. If no teacher comes under the provisions of the act, the school authorities must file a statement of that fact under oath with the county superintendent and with the state treasurer. The managing bodies enumerated must keep a complete and uniform record of data contained in these reports in such form as may be prescribed by the board of trustees of said retirement fund. The state treasurer is directed to credit all moneys received under this act to the fund designated as the Illinois state teachers' pension and retirement fund.

The act does not apply to cities and school districts having a population of over 65,000 in 1910, which had a teachers' pension system organized under a statute prior to the time this act took effect.

The board of trustees is also charged with the administration of the state institutions' teachers' pension and retirement fund, created in 1917. The provisions for the administration of this fund are practically identical with the provisions for the administration of the Illinois state teachers' pension and retirement fund. The provisions of the act

apply to any teacher employed in any state educational, charitable or correctional institution (excepting the University of Illinois) supported wholly or in part by public moneys of this state. The administrative offices, boards, commissions or officers of the various schools and institutions coming under the act are required to transmit quarterly to the state treasurer the sums retained from teachers' salaries, and to make an annual statement to him within seven days after the thirtieth day of June, of all moneys retained in accordance with the act.

Board of Voting Machine Commissioners. This board was established in 1903 and consists of the secretary of state and two persons who must be mechanical experts and not members of the same political party, appointed by the Governor for a term of four years, but removable at his pleasure. The board examines and reports on the accuracy, efficiency, capacity and safety of voting machines. Voting machines not approved by this board cannot be used at any election. Each of the mechanical experts is entitled to \$100 for his compensation and expenses in making an examination and report, to be paid by the person or corporation applying for the examination. Of recent years no work has been done by this commission and no appointments to it have been made.

Centennial Building Commission. The Centennial Building Commission is an advisory commission which was created in 1917. It consists of seven members, the Governor, president of the senate, speaker of the house of representatives, secretary of state, and three other members to be appointed by the Governor.

The director of public works and buildings with the advice of this commission is empowered to determine the exact location of the centennial memorial building, approve the plans and specifications for the building and supervise its construction. The building is to cost approximately \$850,000. It is planned to provide for a memorial hall, a Lincoln memorial room, state library, state historical library, state museum, a repository for state archives, the department of public instruction, and such other departments as may be determined by the commission having the work in charge. When completed the building will be in the custody of the secretary of state.

5. Partly ex-officio and partly elected by the people.

University of Illinois. Prior to 1885 the University of Illinois was known as the Illinois Industrial University. It was established in 1868. It is subject to the control of a board of trustees the superintendent of public instruction, and nine other trustees of whom three are elected every two years to serve for a six-year term. The trustees are voted for on the same ballots with the state officers at the general elections. In case of vacancy the Governor may fill such vacancy by appointment until the next general election. The board of trustees may appoint an executive committee of three members which, subject to its control, shall have the management and control of the

university and its affairs, when the board is not in session. The president, all deans, teachers, scientific staff and other teachers, one private secretary, and one stenographer for the president and each dean, and students employed under civil service rules, are exempt from civil service.

Each county is annually awarded one scholarship in the University of Illinois, upon examination held by the county superintendent. In addition to this, each member of the General Assembly may nominate one person who, upon passing the examination prescribed, is given a certificate of scholarship by the president of the university. All such examinations are held under rules and regulations prescribed by the president of the university.

The University of Illinois is one of the "Land Grant" colleges. It receives the interest from money received from the sale of lands granted under an act of congress passed in 1862 and certain appropriations made by Congress. It is required that the curriculum of the colleges accepting the benefits of the act shall include military tactics, and such branches of learning as are related to agriculture and mechanic arts. No portion of the federal fund may be applied for the erection, purchase, preservation or repair of any buildings. An annual report regarding the progress of each college must be transmitted by the president to all the other colleges coming under the act and to the secretary of the interior, and the secretary of agriculture. All sums appropriated under this act are paid by the secretary of the treasury, upon the warrant of the secretary of the interior, to the state treasurer or other officer designated by the law of the state, who upon the order of the trustees of the college pays over said sums to the treasurer of the college. The treasurer of the college is required to report to the secretary of agriculture and the secretary of interior on or before September 1st of each year, a detailed statement of the amount received and of its disbursement.

The trustees of the university are required biennially before November first to make a report to the Governor for the period closing with the fiscal year preceding the convening of the General Assembly. The report must be so arranged as to show the acts and doings of each fiscal year separately.

By a separate act passed in 1909 the trustees of the university are authorized and directed to establish a department of mining engineering in the college of engineering.

Under an act passed in 1911, an annual tax levy of one mill for each dollar of assessed valuation of taxable property is levied and paid into the treasury of the state, and set apart as a fund from which money may be appropriated for the use and maintenance of the University of Illinois. In 1919 the basis of assessed value was changed from one-third to one-half of full value, and in connection with this adjustment the university tax was reduced from one mill to two-thirds of one mill.

6. Partly ex-officio and partly appointed by an ex-officio board.

Illinois Library Extension Commission. This commission was established in 1909. The commissioners of the state library (the Governor, secretary of state, and superintendent of public instruction), appoint two persons who together with the state librarian constitute the Illinois library extension commission. The state librarian, who is the secretary of state, is ex-officio chairman of the commission. The term of office of the appointive members is two years, and they receive no compensation except traveling expenses and incidental and necessary expenses connected with the work of the commission. The library extension commission receives the advice and counsel of the state library commission and is under its control.

The function of the commission is to give advice and information to existing libraries and to communities or persons interested in starting new libraries. It operates traveling libraries and acts as a clearing house for periodicals contributed for the use of local libraries.

The commission has power to appoint a library organizer who is required to keep informed concerning the work of the various public libraries in the state, assist in starting new libraries, and at the end of each fiscal year make a report of general library conditions in the state, to the library extension commission.

7. Partly ex-officio and partly from officers and members of various societies.

Illinois Farmers' Institute. The Illinois farmers' institute was declared to be a public corporation of the state by an act passed in 1895. It consists of three delegates elected annually in each county of the state by the members of the farmers' institute of the county. Its affairs are managed by a board of directors consisting of the state superintendent of public instruction, dean of the college of agriculture of the University of Illinois, director of agriculture, president of the state horticultural society, president of the state dairymen's association, and one member from each congressional district selected by the delegates therefrom and elected at the annual meeting of the institute, one-half each year for a two-year term.

The function of the farmers' institute is to assist and encourage useful education among the farmers and develop the agricultural resources of the state. The board of directors have the sole care and disposal of all sums appropriated to the farmers' institute by the state. The farmers' institute makes an annual report to the Governor of its transactions. This report includes papers pertaining to its work and addresses made at the annual meeting of the organization. The institute is required to hold an annual meeting of not less than three days' duration for the purpose of developing greater interest in agriculture.

The board of directors has power to fill vacancies in the board. It organizes by the election of a president, vice-president, treasurer and secretary, elected for a term of one year to begin on July first following their election. The secretary and treasurer may be other than members

of the board of directors. The board has power to employ and provide for the compensation of such superintendents, speakers and clerks as may be deemed proper for organizing and conducting its work. The salary of the secretary is \$2,000 a year, payable in monthly installments.

The status of the Illinois farmers' institute and of appropriations made to it, was defined in *Illinois Farmers' Institute v. Brady*, 267 Ill. 98 (1915). This case involved a petition for a writ of mandamus commanding the auditor of public accounts to draw warrants on the state treasurer without compliance by it with the appropriations act of 1913 or the state civil service law. The Supreme Court held: (1) That the fact that the act creating the farmers' institute provided that its board of directors should have sole care and disposal of all sums that may be appropriated to it, does not exempt it from the provisions of the appropriation act of 1913 requiring pay rolls for employes of such corporations and itemized bills before warrants may be drawn by the auditor of public accounts. (2) The farmers' institute, its officers, employes and board of directors are not in the service of the state and are, therefore, not subject to the provisions of the state civil service act. (3) Voluntary organizations cannot appoint to office in the state government, nor can the General Assembly give them power to do so. (4) However, appropriations to individuals and voluntary associations not in the service of the state, and for expenses which would not come within a narrow definition of the term, "expenses of the state government," as used in the appropriation act, are fairly included in such term if they are proper charges, assumed in the discretion of the General Assembly, as expenses of the state government.

8. Partly ex-officio and partly appointed by a constitutional officer.

Teachers' Examining Board. The teachers' examining board was created in 1913, and is composed of five members. The superintendent of public instruction is ex-officio chairman of this board, and he appoints one person who is engaged in educational work, for a four-year term, and three county superintendents, each to serve three years, one to be appointed annually by the superintendent of public instruction upon the recommendation of the county superintendent's section of the state teachers' association at its annual meeting.

The function of the board is to administer the law concerning the certification of teachers in respect to county certificates. The board is empowered to prescribe rules for holding the examinations, and prepare uniform questions for all the state and forward them to the county superintendents under seal. All examination papers must be forwarded by the county superintendent to the teachers' examining board to be graded. Grades are returned to the county superintendent, who is empowered to issue the certificates under the rules prescribed by the board. The board may require county superintendents to make quarterly and annual reports of such data concerning certification of teachers as it may prescribe, and may make all necessary rules and regulations for the proper administration of the act.

9. Appointed by the University of Illinois.

Board of Examiners in Accountancy. The University of Illinois is charged with the examination of applicants and the issuance of certificates as certified public accountants, by an act passed in 1903. The university appoints a board of three examiners, two of whom must be accountants in active practice in the state, and the third may be either an accountant or an attorney skilled in commercial law. Their terms are three years, and they receive \$10 a day for time spent, and their traveling expenses. A university committee of three members is also appointed, which serves without compensation and has charge of preliminary arrangements connected with the examinations.

The board prepares examination questions, conducts the examinations, examines the papers and certifies the results to the university committee. On receipt of this certification, the successful candidates are recommended to the president of the university who issues their certificates. The university may revoke any certificate for unprofessional conduct or other sufficient cause, on notice and after a hearing. A fee of \$25 is collected from each applicant and from the fees received the university pays all expenses incident to the examinations.

VI. ANALYSIS OF THE POWERS AND FUNCTIONS OF THE CONSTITUTIONAL STATE OFFICERS.

Governor. The constitution vests the supreme executive power of the state in the Governor. The actual operation of the political system prescribed by the constitution and various statutory enactments has curtailed this supreme executive power and often made the powers of the Governor ineffectual in practice. An analysis of his powers may point out some of the defects in the system.

Relation to the General Assembly. The powers of the Governor in relation to the General Assembly have been outlined in detail in an earlier chapter of this bulletin. Briefly, he has power to convene the General Assembly on extraordinary occasions, to adjourn the two houses in case of a disagreement as to time of adjournment, to transmit messages concerning the condition of state affairs and his recommendation concerning legislation to the General Assembly, to submit a budget (by legislation of 1917), and to veto bills passed by the General Assembly. He in turn is dependent on the senate for confirmation of many of his appointments. The Governor wields a larger influence over legislation than the enumeration of his powers would seem to indicate. By his authority to recommend measures which he believes to be of importance and by his freedom to support his recommendations with argument and appeal, he may and frequently does occupy a position of leadership in legislation. The extent to which this leadership is recognized is shown by the fact that the two houses usually give preference to administration measures.

It has been suggested that the Governor should be empowered to add additional subjects after the General Assembly has convened, to those named in the original call for a special session. The power to call a special session is given to the Governor in forty-five states, and in only fifteen states is he required to state the purpose of the meeting. West Virginia has the additional provision that the Governor must call a special session on the application in writing of three-fifths of the members of each house.¹

The Governor and all civil officers of the state are liable to impeachment. The charges must be preferred by the house of representatives, and the impeachment must be tried by the senate. No Governor of this state has ever been impeached.

Increased control over appropriations have recently been given to the Governor in several states. Budget amendments were adopted in Maryland in 1916, and in Massachusetts and West Virginia in 1918.

¹ Massachusetts constitutional convention bulletin No. 3. The abolition of the governor's council with a supplement on the statutory powers and duties of the governor and council 1918, p. 117.

In Maryland and West Virginia the General Assembly is denied the power to increase items in estimates presented by the Governor. In Massachusetts the power of the legislative body is not curtailed but practically the same result is obtained by giving the Governor the power to disapprove, or reduce, items or parts of items in any bill appropriating money. The Civil Administrative Code of Illinois provides for an executive budget and the provisions are workable and effectual. There will probably be some agitation in the convention for the adoption of a budget provision. Since Illinois now has a budget prepared under authority of statutory provisions which have proved workable, the adoption of a detailed constitutional budget provision hardly seems necessary. The statutory provisions for a budget are more flexible and better adapted to the ever changing financial needs of the state.

The veto power of the Governor is analyzed in the bulletin dealing with the legislative department.

In actual operation, these constitutional and statutory provisions concerning the relation of the Governor and the General Assembly have some results other than those intended. For instance, the hope of receiving appointments from the Governor may sometimes cause a member to support administration measures. The Governor in turn may find it advantageous to help or at least not to hinder the progress of certain measures, in order to have his appointments confirmed by the senate. Difficulties are most apt to arise when the Governor and majority party in the Senate are not of the same political party.

Power of Appointment. The power of the Governor over the executive administration includes his power of appointment and removal, his duty to see that the laws are faithfully executed, and the direction and control of certain acts of subordinate officials. The increase in the importance of the various appointive administrative officers has made the power of appointment the most effectual of the Governor's powers.

Limitations have been placed upon the appointing power by prescribing certain qualifications in the statutes, by delegating the power in a few cases to ex-officio boards of which the Governor is a member, and by requiring the consent of the Senate, in the case of a number of appointments. The following are typical examples of the qualifications prescribed by statute: (1) The adjutant general must have had service as an officer for not less than five years, at least three of which shall have been in the line; (2) the commissioners of the Illinois State Historical Library must be well versed in the history of the state and qualified by habit and disposition to discharge the duties of the office; (3) and the minority party must be represented in appointments to the Civil Service Commission. Definite qualifications of the first type may be of value where the work of the department is of a professional character. In practice an indefinite qualification like the second type is practically a nullity. The third type of limitation providing for minority representation on various boards is one which has been quite generally condemned. It gives the Governor the opportunity to use those appointments to exercise influence over the minority party in the General Assembly.

Another limitation of the power of appointment is effected through its delegation to an ex-officio board. The appointment of the library extension commission by an ex-officio board of which the Governor is a member, is the only case of this kind in our state government. In practice the Governor seldom takes much part in the affairs of an ex-officio board, whose members are independent of him, consequently he has little power over its appointments. We also have boards in this state which are partly ex-officio and partly appointed by the Governor, which are in actual operation quite independent of him. The Governor and one other state officer are ex-officio members of the board of trustees of the University of Illinois, but they only constitute a part of its membership. The other members are elected by the people and are independent of the Governor.

The requirement of the consent of the Senate to appointments by the Governor is an important limitation on the power of appointment. All the officers under the Civil Administrative Code, and the Civil Service Commission, the court of claims, the trustees of the historical library, the Lincoln park commissioners, the West Chicago park commissioners, and a number of others are appointed subject to confirmation by the senate. The following quotation contains some criticism of this limitation on the power of appointment:

"The less dependent the Governor is upon senatorial confirmation of necessary appointments the more effectively he can use his power to recommend measures to the legislature and to veto undesirable legislation; in other words, the freer he is to develop the possibilities of his constitutional position as special representative of the whole people"

"In general, however, the power of appointment, subject to senatorial confirmation seems to be a source of weakness rather than of strength to state governors."²

Appointment without the consent of the Senate is not uncommon in state government. In this state the adjutant general, the commission for uniformity of legislation in the United States, the penitentiary commission, and the constitutional state officers in case of vacancies, are appointed without the consent of the Senate. In practically all the states, officers of the militia, in New York certain of the trial judges for appellate work; and ad interim appointments in case of vacancies in practically all the states are not subject to confirmation by the Senate. In Virginia none of the appointments of the governor are subject to senatorial confirmation, except the corporation commissioners. In California the five railroad commissioners are appointed without the consent of the Senate.

Power of Removal. The Governor has power to remove any officer, whom he may appoint, for incompetency, neglect of duty, or malfeasance in office. He may remove officers appointed with or without the consent of the senate, and the courts cannot dictate in what manner he shall perform the duty. His power of removal is in fact more complete than his power of appointment since he is able to remove officers whose appointments must be confirmed by the senate.³

² Holcombe, A. N. State government in the United States 1916, p. 338-342.

³ Wilcox v. People, 90 Ill., 186 (1878).

The provision of the Illinois constitution concerning removal of officers does not go far enough to give him a comprehensive and effective control over the state administration. To accomplish this object, it has been suggested that the Governor should be given the power to remove elective as well as appointive officials. The Pennsylvania constitution of 1873 gives the governor power to remove officers whom he may appoint, and also many elective officers "on the address of two-thirds of the senate." The constitution of Michigan gives the governor the power to remove any state officer, except legislative or judicial, during the recess of the legislature, for gross neglect of duty or corrupt conduct, or misfeasance or malfeasance in office.

Control of Other Officials. In addition to his power of removal, the Governor has other methods of control over officers after appointment. He can control their expenditures through the executive budget, and his veto power. He can require information from them in writing concerning the affairs of their offices and any officer who makes a false report is guilty of perjury. This power is, however, of little value as a power to be exercised against other elective state officers. Various statutes require his approval of official bonds, the letting of contracts, and vouchers for expenditures. All the officers of the code being appointed by the Governor and responsible to him, he has an effectual control over them.

Law Enforcement. The constitutional provision that the Governor shall see that the laws are faithfully executed gives him in actual operation but little power over the executive department. The power is vague and is not considered as giving the Governor any definite means of compelling other officials to act. In reality the execution of the laws is largely in the hands of the attorney general, the state's attorneys and the sheriffs. They are the real executives as far as responsibility for the enforcement of laws is concerned. The state's attorneys and the sheriffs are locally elected. Election by the people, the imposition of statutory duties, and the vesting of an independent official discretion, have removed these officers from the control of the executive. The proposal of appointment of the attorney general by the Governor will be discussed later in this chapter. In this state the Governor has the power to remove a sheriff who allows a prisoner to be taken from his custody by a mob. In New York, Michigan, Wisconsin and a few other states, the Governor may remove sheriffs and district attorneys for neglect of duty or inefficiency.⁴ An Oregon plan of reorganization of state government proposed that the Governor be given power to appoint sheriffs and district attorneys.⁵

The enforcement of law by local officers is a matter of direct concern to the state, and in case of neglect of duty, it has been urged that the Governor should be given the right to remove such local officials. To do this may be regarded as violating the principles of local self-government and municipal home rule. Municipal home rule, however, will deal primarily with the matters of purely local concern. Any state

⁴ For a discussion of law enforcement see McLaughlin and Hart. *Cyclopedia of American government*. Removal of elected officials, U. S., Vol. 3, p. 178; Mathews, J. M., *Principles of American state administration*, p. 105-109.

⁵ Beard and Schultz. Documents on the initiative, referendum and recall. VI Appendix. The Proposed Oregon System, p. 349-383.

control over local offices is intended primarily to be exercised as a means of control over the performance of state functions by local officers. The problem of the independence of state's attorneys will be discussed later in this chapter.

On the other hand, the Governor has been given the appointment of some local officers, who are of no aid in the execution of the laws, and who deal with matters of purely local concern. With the advice and consent of the senate, he appoints the commissioners of Lincoln park and the West Chicago park commissioners. These commissioners exercise functions which deal entirely with local park districts, and the commissioners should properly be appointed by local authorities. A number of other separate park governments have been created within the city of Chicago and there is a growing agitation to consolidate them into one district. An act consolidating the park districts of Chicago was enacted in 1915, but it was rejected when submitted to the people. The Chicago bureau of public efficiency in its report on "The park governments of Chicago," says. "The attempts to so organize the several park districts as to keep them out of politics has been futile, especially in the West park district. Making the West and Lincoln park boards appointive by the Governor has only resulted in a different brand of politics—that incident to state interests and factions and less susceptible of local control. The conditions should be faced that politics will enter to some extent into any kind of a park organization. This being true, it is submitted that the plan of organization should be such as to be most susceptible of autonomy and local control. It is easier to control one district than ten."⁶

The status of the West Chicago park commissioners was defined in *Wilcox vs. People*, 90 Ill., 186 (1878). Referring to the Governor's power to remove these commissioners, the Supreme Court said, "The members of the board of West Chicago park commissioners are agents, by whom, in part, the people of the state carry on the government. Their functions are essentially political, and concern the state at large, although such functions are to be discharged within the town of West Chicago."

In the enforcement of the laws the Governor also has the power to call out the state militia. As an instrument of the police power of the state, the militia has been subjected to considerable criticism in recent years. At the 1919 session of the General Assembly a bill for the establishment of a state police, modeled on the Pennsylvania and New York state constabulary, evoked considerable interest but failed to be enacted. In this connection it may be interesting to note that the governors appoint the police commissioners of two of the more populous cities of the country, Boston and St. Louis and that police commissioners for Baltimore are chosen by the Maryland state legislature. In some states the governors have been given the power to remove certain municipal officers as well as county officers.

The election of so many independent state officers makes the Governor's power to see that the laws are faithfully executed a nullity.

⁶Chicago bureau of public efficiency. The park governments of Chicago. 1911, p. 174.

A very small measure of control over them is conferred on the Governor, but even when such control is conferred on him, it is ineffectual in practice. They, too, are elected by the people and, in fact, responsible to the people alone. They have been given by statute the administration of many important laws, and these laws are administered independently of the Governor. For instance, the state highway division, operates under the code, and through it the Governor has direct control of highway administration. However, the funds expended for highway purposes are largely the receipts from automobile licenses. The secretary of state has been charged with the licensing of automobiles, and exercises this function in entire independence of the Governor; who is only responsible to the people for results in highway construction commensurate with the amount of automobile license fees collected.

Pardoning Power. The Governor, through his pardoning power, has an authority which bears a close relation to the administration of justice. The constitution says: "The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such regulations as may be provided by law relative to the manner of applying therefor." In accordance with this provision, the statutes require application for pardons to be made through the division of pardons and paroles in the department of public welfare. Its action on such applications is only advisory to the Governor.

The President of the United States has "power to grant reprieves and pardons for offenses against the United States except in cases of impeachment." The United States constitution does not forbid pardon before conviction as the Illinois constitution does. With the exception of six states (Kansas, Kentucky, Maryland, Oregon, Vermont, Washington), the constitutions expressly permit the exercise of the pardoning power only after conviction.

In most of the state constitutions, the pardoning power is divided into (1) commutation of sentences; (2) pardons, remission of fines, penalties and forfeitures; and (3) granting of reprieves. In more than half of the states the power to commute sentences, and to pardon, except in cases of treason or impeachment, or both, and to remit fines and forfeitures is given to the Governor acting alone. In forty states he has exclusive power to grant reprieves. In most instances his power to exercise clemency is subject to regulations prescribed by law, such as the Illinois provision concerning the manner of applying for pardons. Upon the recommendation of the board of pardons or in conjunction with it, or with the approval of the board of pardons and the council, the Governor has the power to commute sentences in seven states, to pardon in nine states, to remit fines and forfeitures in six states, and to grant reprieves in three states.⁷ Connecticut seems to be the only state in which the power to pardon is given to the legislature. In most states the constitution requires that the Governor, or the board of pardons, where it has exclusive power and the Governor is not a member of it,

⁷ Massachusetts. Constitutional convention bulletin No. 3. The abolition of the governor's council with a supplement on the statutory powers and duties of the governor and council, p. 118-119.

shall report to the legislature, at each session thereof, biennially or annually, each case of commutation, pardon, remission or reprieve, and certain specific information concerning it. The Illinois constitution of 1848 had a similar provision.

Several state constitutions except cases of treason, with a clause permitting temporary reprieves in such cases. In California any one convicted twice of a felony can only be pardoned upon a written recommendation of a majority of the judges of the Supreme Court. In Vermont murder cases are excepted as well as treason and impeachment cases. In Oregon treason cases are excepted, but impeachment cases are not. In Texas, those convicted of treason can be pardoned only with the consent of the Senate.⁸

Appointment of Judges. The Governor has the power to appoint judges in this state where vacancies occur, when the unexpired term of office does not exceed one year.⁹

Summary. From this discussion of the powers of the Governor, it is apparent that, while his influence in matters of legislation is important and increasing, that outside of the departments created by the Civil Administrative Code his control over state administration is far from complete. He has little effective power of direction over many administrative officials and his power of appointment and removal is too restricted to be effective. His power to enforce the laws of the state is particularly weak. The Civil Administrative Code has strengthened his position as the actual head of the executive department, but there is still a large field of state administration over which he has slight control.

Lieutenant Governor. The lieutenant governor is the only constitutional state officer who performs no statutory duties or functions. He is an executive officer with normally legislative functions. Except in the case of succession to the governorship, the role which the lieutenant governor plays is a relatively unimportant one. He presides over the senate, but has no part in the deliberations of that body and no vote except when the senate is equally divided.

In four states, namely, Arizona, Oregon, Utah and Wyoming, it is provided that the secretary of state shall succeed to the governorship. The constitutions of thirty-five states of the union provide for the election of a lieutenant governor. In the remaining states¹⁰ the succession to the governorship is vested in some other officer, usually the president of the senate or the speaker of the house.¹¹ The question has been raised concerning the necessity for the election of an officer whose main function is to fill a vacancy in another position. It has been pointed out that vice presidents of the United States and lieutenant governors of the states have usually represented a somewhat different element

⁸ For a discussion of the pardoning power see Massachusetts constitutional convention bulletin No. 4. The pardoning power; Fairlie, J. A. The state governor, p. 26-28.

⁹ Const. 1870, Art. VI, Sec. 32.

¹⁰ Arizona, Arkansas, Florida, Georgia, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, Utah, West Virginia and Wyoming.

¹¹ Massachusetts. Constitutional convention bulletin No. 3. The abolition of the governor's council with a supplement on the statutory powers and duties of the governor and council. p. 119.

or point of view from the presidents and the governors; and that a change of policy in administration is more likely to arise when the chief executive is succeeded by such an official than if he were succeeded by an officer appointed by the executive himself. The problem to be decided in this matter is the necessity of retaining the office of lieutenant governor as a separate elective office.

Secretary of State. Constitutional provisions prescribe some of the powers and duties of the secretary of state, but most of the functions performed by him are prescribed by statute. They cover a wide variety of matters, which may be classified under the following headings:

1. Keeper of records.
2. Custodian of building and grounds.
3. Furniture and supplies.
4. Elections.
5. Corporations.
6. Automobile licenses.
7. Membership on ex-officio boards and offices.
8. Miscellaneous.

From this classification it is evident that the powers of the secretary of state form a heterogeneous group of functions not closely related to each other. Many of these matters have no necessary connection with the office of secretary of state and instances may be found in other states where most of his functions, except that of keeper of certain official records, are given to some other officer or board. Most of his duties are of a ministerial character, and unlike the functions of the attorney general, do not ordinarily involve the exercise of discretionary power.

The secretary of state or the secretary of the commonwealth is an executive officer found in all the states. He is elected by popular vote in all states except Delaware, Maryland, New Jersey, Pennsylvania and Texas, in which states he is appointed by the Governor with the advice and consent of the senate.

The report of the efficiency and economy committee said:

"Some of the functions of the Secretary of State are closely related to those of other independent officers and boards; and have been considered in other reports prepared for the Efficiency and Economy Committee. In a general reorganization of the state service such positions might well be transferred from the Secretary of State and associated with other authorities dealing with the same general subject. Thus the supervision over corporations could be combined with the supervision over banks, insurance companies, and public utilities in a Department of Trade and Commerce as proposed in another part of this survey. . . .

"If the Secretary of State were made, as he should be, an officer appointed by the Governor, the loss of some of his present functions could be offset by the transfer to his department of other services and

by giving this department more complete control over some matters, over which it has now only a partial control."¹²

With the organization of a department of public works and buildings under the civil administrative code the control over buildings is partially vested in this department, and partially under the secretary of state.

The secretary of state serves on eight ex-officio boards and offices. The most important office which he holds ex-officio is librarian of the state library. From 1845 to 1862 he served as superintendent of public instruction ex-officio.

The supervision of corporations was at first very generally given to the secretaries of state in the various states, but there has been a definite tendency to place this supervision under separate boards or officers of late years.

Auditor of Public Accounts. The constitution provides that "No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon." The auditor also has supervision over banks, and building and loan associations, a function quite distinct from the audit of public accounts. Under the present system, the auditor is responsible for the audit of his own expenditures as banking commissioner. The tendency to place unrelated functions under the auditor is discussed in "The Constitution and government of the State of New York." Discussing the office of comptroller, which corresponds to our state auditor, it says:

"Here we have an auditing office, established as a part of the constitutional machinery for fixing and enforcing administrative responsibility, and yet laboring under administrative duties assigned to it by statute, the effect of which is to destroy the disinterestedness of its audit and verification."¹³

The auditor is not the only state officer whose function it is to audit accounts. The Governor is charged with the examination of the accounts of the Illinois Central Railroad to determine that the state receives its share of the company's earnings.¹⁴

"All of the states have made provision for auditing the receipts and payments of the state treasury; and in all the states except three a separate state officer and department has been established for this purpose. In Wisconsin and Oregon the Secretary of State acts as Auditor; and in New Hampshire warrants on the treasury are drawn by the Governor, who annually appoints a committee of two or more members of the executive council, to audit the accounts of the state treasurer.

"This official [the Auditor] is elected by popular vote in all of the states except New Jersey and Tennessee, where he is chosen by the

¹² Illinois. Efficiency and Economy Committee. A report on the secretary of state and law officers. In its Report, p. 951-952.

¹³ New York state constitutional convention commission. The constitution and government of the state of New York, p. 86.

¹⁴ For a discussion of the extent and character of this power of the governor see *State of Illinois v. Illinois Central Railroad Co.*, 246 Ill. 188 (1910).

legislature. His term in most cases corresponds with that of the state treasurer; and like that official, this is sometimes for a shorter period than the governor; but in a few states the Auditor has a longer term than the Treasurer, as in Illinois, Minnesota and Ohio (four years) and Pennsylvania (three years). These factors serve to emphasize the independence of the office from the chief executive; but none of the states have placed the position on the basis of judicial tenure, as are the auditing officials in Great Britain and most of the countries of continental Europe."¹⁵

In Illinois the primary function of the auditor is to act as a check on the state treasurer, and the election of these two officials who deal with finances, prevents the organization by statute of a thoroughly consolidated department of finance under the control of a single official.

In framing constitutional provisions concerning the auditor, the maintenance of his independence from the Governor has always been considered an important point. For this reason it may be suggested that, if it is considered necessary to continue the popular election of the auditor, he should not be elected at the same time as the Governor. In the Oregon plan for reorganization of the state government, the independence of the auditor is accomplished by making the auditor and the Governor the only elective officers of the executive department. A similar result is obtained in New Jersey and Tennessee by having the auditor chosen by the legislature. In most states the result of placing the control of disbursements in the hands of an official theoretically independent of the executive has been that in fact there is no real independent examination of the accounts and financial reports. The experience of European governments indicates that the accounting system and the detailed control over disbursements may well be placed in a branch of the executive administration, provided there is a subsequent audit of the accounts by an independent agency. The system adopted by the Civil Administrative Code in Illinois, vests the control over disbursements by officers appointed by the Governor in the department of finance. However, there is at present an overlapping of functions of the auditor and the department of finance, which will be discussed in the next chapter.

Treasurer. The state treasurer receives the public revenues from the various collecting authorities, pays the bills of the state, upon presentation of warrants of the auditor, and has custody of the public funds. These funds are deposited in various banks selected as depositories according to law. His functions are largely ministerial, and for the most part controlled by the auditor. He is a member of four ex-officio boards, only two of which deal with financial matters. The treasurer is elected for a shorter term than any of the other state officials.

Every state has a state treasurer. He is the oldest state financial official, and is elected by popular vote in most states, even where the other state officials are appointed. In Maine, New Hampshire, New

¹⁵ Fairlie, J. A. A report on revenue and finance administration. In the Report of the efficiency and economy committee of Illinois, p. 148.

Jersey and Maryland, the treasurer is chosen by the legislature. In this manner he is made independent of the Governor. A similar result is secured by election at a different time or for a shorter term than the Governor, in Pennsylvania, New Jersey, Maryland, Indiana and Illinois. The organization of the financial administration of the federal government combines the functions of treasurer and auditor in one department and makes the whole department responsible to the president who is in turn responsible to the people. The success of this plan has been advanced as an argument against the need of an independent treasurer and auditor.

The committee on retrenchment of the New York State reconstruction commission recommended that the treasurer be made an appointive officer under a proposed commissioner of taxation and finance. He would be the head of the bureau of treasury. The treasurer is also an appointive officer under the proposed Oregon plan of state government.¹⁶

Superintendent of Public Instruction. The superintendent of public instruction has general supervision over the common and public schools, with advisory and quasi-judicial powers over local authorities, and with some administrative and financial powers. He controls the distribution of the state school funds. His relations to local authorities are principally supervisory in nature.

The superintendent of public instruction exists under some title in every state. In thirty-three states, the superintendents are elected by popular vote, in seven (Maine, Massachusetts, Minnesota, Ohio, Pennsylvania, New Jersey and Texas) they are appointed by the Governor and in eight (Connecticut, Delaware, Maryland, New Hampshire, New York, Rhode Island, Tennessee and Vermont) they are appointed by the state board of education.

Concerning the election of the superintendent of public instruction, the educational commission of this state, which was appointed in 1907, in its report made the following statement: "The election by the people, as well as that of the election by the General Assembly, is open to the objection that political affiliations and political expediency rather than merit determine the selection of a candidate for the office of superintendent of public instruction. It does not always happen that the man best qualified for the duties of the position belongs to the dominant party. Yet a political party is not liable to select a candidate outside its ranks. Again, the state superintendency is to the politicians, perhaps, the least important of the state offices."

" . . . The appointment of the school executive by the Governor or by a state board has worked well in those states in which this method of selecting this officer has been practiced. If political considerations have not always been left out of account they have in many cases been plainly ignored. In Pennsylvania, for instance, in which state the superintendent of public instruction is appointed by the Gov-

¹⁶ Beard and Shultz. Documents on the initiative, referendum and recall. VI Appendix. The proposed Oregon system, p. 376.

error, with the advice and consent of two-thirds of all the members of the senate, there has been no strictly political appointment to the office of superintendent of public instruction during the last generation."¹⁷

A report to the efficiency and economy committee said that there was need for an increase of the powers of the state superintendent of public instruction and a strengthening of the powers which he already possessed. It analyzed his present powers as "largely advisory and clerical in character." This commission favored the appointment of the superintendent of public instruction by the Governor.¹⁸

A recent bulletin of the United States bureau of education outlines the following objections to selecting the state superintendent of public instruction by popular vote.

"1. This method of selection limits the field from which to choose, as the superintendent must be a citizen of the given state. In states where the superintendent is appointed by the state board of education or by the Governor, this official may be selected from the country at large. Such freedom of selection is clearly in the interest of better service.

2. Where the state superintendent is selected by popular vote the salary is fixed by law. The salary cannot be adjusted to fit the person desired; but a person must be found to fit the salary.

3. Where the state superintendent is elected by popular vote the term of office is short, two to four years, and reelection is uncertain. This lack of continuity in the service is a serious handicap to the superintendent, however capable.

4. This method of appointment makes the office political and subjects it to all the fluctuations of party and factional politics."¹⁹

In favor of the election of the superintendent it may be urged that the office should be directly responsible to the people because a large proportion of the appropriations for each biennium are for educational purposes, and also because of the fact that his functions so far as they have to do with the common schools do not relate closely to that of other officers of the state. Furthermore, it may be suggested that it is doubtful whether appointment by the Governor will be any more successful in removing the office from politics than by election at a different time than other state officers. Concerning lack of continuity of service it may be noted that the present incumbent of the office was first elected in 1906, and that his predecessor served two consecutive terms. There is also another case in earlier times where Newton Bateman served ten consecutive years as superintendent, 1865-1875, in addition to an earlier period of service from 1859 to 1863.

¹⁷ Report of the educational commission. In the Twenty-eighth biennial report of the superintendent of public instruction of the state of Illinois. July 1, 1908-June 30, 1910, p. 267-268.

¹⁸ Mathews, J. M. A report on educational administration. In the report of the efficiency and economy committee of Illinois, p. 412-413.

¹⁹ U. S. Bureau of education. A manual of educational legislation for the guidance of committees on education in the state legislatures, 1919, p. 11.

Attorney General. It is the duty of the attorney to act as attorney for the state and state officers before the courts, and to act as legal adviser to the Governor, other state officers and the General Assembly. His duties are prescribed by statute and in practice involve the exercise of considerable discretionary power. He is the chief legal officer of the state, but he has been given supervision of the inheritance tax administration which is primarily a financial rather than a legal matter. He is also ex-officio a member of the state canvassing board.

The office of the attorney general is of particular importance in this state because of the Supreme Court decision in *Fergus v. Russel*, 270 Ill., 304 (1915), holding that the common law powers which the attorney general possesses under the constitution are inherent in the office, and cannot be taken away by the General Assembly. Moreover, since the attorney general is the chief law officer of the state, appropriations to other officers and boards for legal services and attorney's fees are invalid. Under this decision, all legal advice and services in the enforcement of the laws must be performed by the attorney general. All departments of state government are also dependent upon him for advice and interpretation of the statutes which they are directed by law to administer.

This advisory power, coupled with that of attorney for the state, makes the attorney general an important factor in the formation and execution of administrative policies. He is brought into close connection with every branch of state government, and to a large extent affects the administration of laws by all state officials.

The attorney general is chosen by popular vote in every state except Maine, New Hampshire, New Jersey, Pennsylvania, Tennessee, Vermont and Wyoming. In these states he is chosen either by the Governor alone, or by the Governor with the consent of the senate, or by joint ballot of the two branches of the legislature. In most states his powers as public prosecutor are seriously curtailed by the powers granted to the state's attorneys in their respective districts.

The attorney general of the United States is a member of the cabinet, appointed by the president, and removable by him at will. It has been suggested that a similar system in state government would be preferable to the present system of popular election. In Pennsylvania and New Jersey, two of our most populous states, the attorney general is appointed by the governor.

This question was discussed in the New York constitutional convention of 1915. President Taft spoke before the convention committee in favor of the appointment of the attorney general as follows: "When you consult a lawyer, you don't consult a judge. You consult a man who is with you, seeking to help you carry out the lawful purposes that you have. Therefore he ought to be your appointee. You select him. Now the chief executive is given an attorney general to advise and represent him in all legal matters. I don't see why he shouldn't be appointed. It would be most awkward if he was not, in Washington, I can tell you that."²⁰

²⁰ New York constitutional convention documents, No. 11, 1915, p. 8.

In a document published by the New York state constitutional convention commission, the following statement was made: "What is of special interest is this: that a thousand opinions are asked from the law officer to one asked for from the courts; that under our system the law officer makes the law governing the administration of affairs; that making him politically independent gives to the executive another way of dodging political responsibility; that it is a conception of organization that finds its justification as a 'check' in a government which has no politically responsible head."²¹

Governor Goodrich of Indiana in his message to the General Assembly at the opening of the 71st biennial session, 1919, said: "The Attorney General is necessarily the legal arm of the executive; upon him must the governor depend for carrying forward many of the acts of his administration, and the appointment should be made by the Governor.

"I recommend that the office of attorney general as an elective office be abolished and that the Governor be authorized to appoint the attorney general on and after the expiration of the term of the present incumbent, Mr. Stansbury.

"The cry has been raised in some quarters that in attempting to simplify and render efficient the machinery of government of Indiana, we are tending toward a 'dangerous centralization of power.' While I believe that most of the criticism is honest, I feel sure that it arises from a hasty and immature consideration of the subject. I do not believe that we will be treading on dangerous ground if we give to the next chief executive of Indiana, whoever he may be, the right to choose his own legal adviser, a right enjoyed by every citizen of our land, a right accorded the mayor of every city in our state and by every other executive officer from the President of the United States down to the most unassuming county commissioner."²²

It has been argued against appointment by the Governor that the attorney general should be independent because of his function as prosecutor of public officials. If his appointment and removal were controlled by the Governor, it has been suggested that he might be reluctant to prosecute other officials appointed by the Governor. It may be noted that the attorney general was retained as an elective officer under the proposed reorganization of the executive department of the New York state constitution submitted in 1915.

In the constitutional convention recently held in Massachusetts, a proposal to inaugurate a thoroughgoing system of law enforcement by giving the attorney general the power to appoint district attorneys was discussed. The duties of district attorneys in Massachusetts correspond to the duties of state's attorneys in Illinois. In this connection, Mr. Chas. P. Howard, of Reading, presented a resolution, providing that the attorney general should be appointed by the Governor, and should be removable by him, that he should be the head of the Law Department of the Commonwealth, and should be empowered to

²¹ New York state constitutional convention commission. The constitution and government of the state of New York. An appraisal, p. 115-117.

²² Message of Governor James P. Goodrich delivered at the opening of the 71st biennial session of the Indiana General Assembly, 1919, p. 11.

appoint district attorneys for indeterminate terms and assign them to such districts as he might deem advisable, subject to his direction and removable by him.

Mr. Pillsbury in discussing this resolution said: "It is speaking within bounds to say that the Attorney General, by and large, is quite as powerful or influential a functionary as the Governor, and the district attorney, a vastly more important character than any single judge of any court."²³

²³ Massachusetts. Debates in the constitutional convention, v. 1, p. 1031-1039.

VII. LACK OF COORDINATION AND OVERLAPPING OF FUNCTIONS.

In this chapter attention is called to several of the more important cases in which there is lack of co-ordination; largely because with respect to the same matter, powers have by statute been conferred upon statutory officers and also upon executive officers created by the constitution. The matter here dealt with becomes of importance to the constitutional convention, because a better coordination of functions may require not merely a change in statutory powers but also a change in the status of constitutional officers now exercising such statutory powers. The discussion of overlapping functions does not seek to be complete, and does not cover at all instances of overlapping which relate to purely statutory officers, such as those with respect to public health administration, and with respect to agriculture (the latter due in large part to the peculiar status of the Farmers' Institute).

Finance Administration. State finance administration is distributed between a number of elective officers and appointive boards without concentrated responsibility. Various state departments have duties of some importance in this field, including the Governor, the auditor of public accounts, the treasurer, the tax commission, the finance department, the secretary of state (as receiver of corporation fees and automobile licenses), the attorney general (in supervising the inheritance tax), the department of trade and commerce (as receiver of insurance fees and taxes), the tax levy board, the court of claims, and the state depository board. Some auditing powers are vested in the civil service commission through its control of state employes, and in the department of public works and buildings, through its power over state contracts, and supervision of purchasing.

The procedure necessary in the payment of salaries of state employes under the Civil Administrative Code will illustrate the working of some of the components of this financial system. A monthly payroll is sent by the department issuing it to the civil service commission for its certification that none of the employes are employed in violation of the provisions of the civil service act. It is then sent to the department of finance, where it must be audited and approved. The department of finance sends it to the auditor, who again ascertains that the payments therein specified are authorized by the appropriation act, a repetition of the work of the department of finance. The auditor then issues warrants on the treasurer for the payment of the employes. In case a contract, or purchase of supplies, is involved, instead of personal services, the voucher issued by the department incurring the

liability must also be approved by the department of public works and buildings. Every payment of money from the state treasury by a department under the Civil Administrative Code involves this cumbersome financial procedure.

The constitution seems to designate the auditor as the chief financial officer of the state, but in fact he exercises no further power than to see that no money is paid out of the state treasury without authority of law. Statutes have directly conferred powers of financial control on other state officials. The Governor for instance, under the charter granted the Illinois Central Railroad, is given the power to pass upon the correctness of the accounts of the railroad in order to determine the amount of the 7% gross receipts tax due to the state.¹

Most of the statutes creating the departments outside of the Civil Administrative Code provide that vouchers for expenditures must be approved by the Governor, and the approval of these vouchers has been delegated by the Governor to an administrative auditor in the department of finance.

The function of the department of finance is to provide a centralized control of the expenditures of all departments subject to the Governor and to prepare a state budget. The court of claims is given the power to adjudicate claims against the state, but their adjudication is in effect merely a recommendation to the General Assembly, which must make the necessary appropriations before claims are paid. The treasurer must open the bids for the deposit of state moneys in the presence of the auditor and the director of finance, but the power to pass on such bids is in the treasurer alone.

The administration of the revenues of the state (as distinguished from its expenditures), is vested in the following departments and officials: the tax commission, the tax levy board, the department of trade and commerce (insurance fees), the attorney general (inheritance tax), the secretary of state (corporation and automobile fees). The last two officers mentioned are not responsible to the Governor, and his supervision over revenue collection is incomplete.

The reorganization plan of the New York State Reconstruction Commission makes an effort to keep the auditing functions separate from other financial agencies. It proposes the organization of a department of audit and control, whose head is to be a comptroller elected for the same term as the Governor, and a department of taxation and finance under the proposed organization. The latter department is to be divided into five bureaus:

- Bureau of taxation and revenue;
- Bureau of the treasury (whose head should be an appointed state treasurer);
- Bureau of motor vehicles;
- Bureau of purchasing;
- Bureau of administration.²

¹ For a discussion of the extent of this power, see *State v. I. C. Railroad Co.*, 246 Ill. 188 (1910).

² New York state reconstruction commission. Draft of summary of report on retrenchment and reorganization in the state government, 1919, pp. 15-17,

Educational agencies. The public elementary and secondary schools of Illinois are primarily directed by local authorities, under the provisions of state laws, with a limited supervision by the state superintendent of public instruction. The normal schools and the University of Illinois are under state control. The government and management of the normal schools is vested in a normal school board in the department of registration and education. This board consists of nine officers appointed by the Governor, together with the director of registration and education, who is ex-officio chairman, and the superintendent of public instruction, who is ex-officio secretary of the board. This board acts independently of the department of registration and education and the superintendent of public instruction has no control over it. The director of the department of registration and education, the chairman of this board, is the chief executive of a department of which this board is a part, and the heterogeneous activities of this department include the licensing of some twelve different professions, trades and occupations, and the management of the state museum, and various scientific surveys. We have the anomalous situation of the normal schools being managed by a board directly responsible to the Governor, and in actual operation, quite independent of the superintendent of public instruction, the nominal head of the school system of the state.

The University of Illinois is under the control of a board of trustees consisting of the Governor, the director of the department of agriculture, the superintendent of public instruction and nine trustees, three elected every two years to serve for a six year term. The trustees are voted for on the same ballots with the state officers at the general election, that is, their election is partisan. Their nomination, however, is not by primary but by convention.

"The popular election of trustees tends to lengthen the state ballot where it should be shortened, and contains a possibility, at least, of injecting political considerations where they should not be allowed to enter.

"A change in the method of electing the members of the board of trustees for the State University should be considered. Even if continued as a body chosen by popular election, the time and manner of election should be changed. In Michigan the regents of the State University and the trustees of the State Agricultural College are elected at the biennial April election for judges of the Supreme Court. The trustees of the University of Illinois might be elected at the time of the township and city elections in April; and provision made for non-partisan nominations for those positions.

"In most of the states the board of trustees or managing board for the state university is appointed by the Governor, usually with the consent of the Senate; and the adoption of this method should also be taken into consideration."³

³ Mathews, J. M., A Report on educational administration. In the Report of the Efficiency and Economy Committee of Illinois, pp. 427-428.

In the department of registration and education there are also the following scientific surveys; the natural history survey, the water survey, the geological survey, and the entomological survey, and the board of natural resources and conservation advisers. This department also has control of the state museum. The board of trustees of the State University has established an agricultural experiment station and an engineering experiment station. These experiment stations are supported out of the regular university funds, and the agricultural experiment station receives some funds from the United States. A cooperative investigation of coal mining problems has been established by agreement between the geological survey division, the University department of mining engineering, and the United States Bureau of Mines. Concerning organization of these surveys before the enactment of the Civil Administrative Code, the report of the efficiency and economy committee contains this statement:

"There seems to be room for improvement in the administrative organization of the state's scientific services, by placing them under the same general supervision. This may be done either by placing them under the university board of trustees, as is now the case with the water survey and the natural history laboratory, or by establishing a commission on natural resources in place of and similar to the present State Geological Commission."⁴

No question of reorganization presents more difficulties than that of the libraries. The state of Illinois maintains the following libraries in Springfield; the state library, the library extension commission library, the law library, state museum library, and the legislative reference bureau library. Outside of Springfield there are libraries maintained in connection with the university, state normal schools, various charitable and penal institutions, the appellate courts. The office of the superintendent of public instruction, and the office of the public utilities commission and other departments and commissions in Springfield also maintain small libraries. In any reorganization or consolidation of these libraries the state law library, because of its close relation to the Supreme Court, is likely to remain an independent agency. The primary function of the legislative reference bureau is that of bill drafting and furnishing information to members of the General Assembly, and the maintenance of a library is merely incidental to these functions. The historical library has a distinct function with reference to its research and publication work. However, it is undoubtedly true that there is duplication in the work of these libraries and a general lack of coordination of their activities.

The Governor is chairman of the legislative reference bureau, and the state museum library being under the code, he has direct control of it. The Governor is ex-officio a member of the board of commissioners which nominally controls the state library and the library extension commission. The secretary of state, however, being ex-officio state librarian and chairman of the library extension commission is the actual force in the management of these libraries. The superin-

⁴ *Ibid.*, p. 477.

tendent of public instruction, to whose work the library management is most germane, like the Governor, is ex-officio a member of the board of commissioners of the state library.

From this outline it may be seen that there are important questions in library administration to be solved in this state, and many difficulties in the way of their solution. In this connection the plan of organization of the state libraries in New York and Indiana as a branch of their educational system is interesting. The law library, however, in New York, and the legislative reference bureau in Indiana are under separate management. Ohio, Texas and California have appointive library boards, and the state libraries under their jurisdiction include all or at least the most important library services. In many of the states there are separate authorities for different phases of library work as in Illinois.⁵

The vocational education board is a separate board of which the superintendent of public instruction, and the director of the department of registration and education, are ex-officio members. This completes the enumeration of the agencies whose work is educational in character.

The main problem for the consideration of a constitutional convention concerning these agencies is in connection with the framing of provisions concerning the office of superintendent of public instruction. The report of the educational commission (1907) and the report of the Efficiency and Economy Committee (1915), both recommended the creation of a state board of education and the strengthening of the power of the superintendent of public instruction. We have discussed the suggestion of making him an appointive officer in the preceding chapter.

The United States Bureau of Education, in a recent bulletin, contains the following discussion concerning state educational organization:

"Modern educational development is toward the state board of education as the administrative head of the state's educational system. Thirty-seven states leave the entire direction of the public school system to such boards. Several states have no such state boards; in several others, boards have been organized since the passage of the Smith-Hughes act to administer the funds provided under this act; and in others again the state boards of education administer only the higher educational institutions, as the university, agricultural college and normal schools.

"Of the thirty-seven states with state boards of education, eight have ex-officio boards, which usually comprise the Governor, the superintendent of public instruction and one or more other state officials such as secretary of state, attorney general, treasurer, auditor, etc. Of the 28 states, with appointed state boards, 22 leave the appointment to the Governor subject, in most cases, to approval of the state Senate; four states leave the selection of the boards to the state legislature; one state

⁵ Mathews, J. M. A report on educational administration. In the Report of the Efficiency and Economy Committee of Illinois. Pp. 456-464 contain a discussion of state library administration.

puts it to popular vote; and in one state it is left to the state superintendent of public instruction.”⁶

The Efficiency and Economy Committee recommended the creation of a department of education to include the work of the superintendent of public instruction, the normal school boards, the university trustees, the state library, a natural resources commission and other state agencies. The superintendent of public instruction was to be the executive head of the proposed organization. The educational agencies which have been consolidated in the department of registration and education, if divorced from the registration functions which are but vaguely related to education, form a good basis upon which to organize such a department, in combination with that of the superintendent of public instruction.

Corporations. The department of trade and commerce has jurisdiction over insurance companies, and through its nominal supervision of the public utilities commission, it has some jurisdiction over public utility corporations. The secretary of state issues charters of incorporation to most classes of corporations, and exercises some supervision over a great number of ordinary business corporations. He is also charged with the administration of the “blue sky law.” The auditor of public accounts issues charters to state banks, has supervision of the state banks and banking institutions, trust companies, title guarantee companies, building and loan associations and pawnbrokers’ societies. A banking law which is to be submitted to the people in November, 1920, enlarges his supervision over banks. Thus, the administration of the laws concerning corporations is divided between two elective state officials and the department of trade and commerce.

The tax commission, which is nominally a part of the department of finance, is charged with the assessment of the capital stock of all corporations except those for manufacturing, mercantile, mining, printing and publishing newspapers, breeding of stock and banking purposes. The latter corporations are assessed locally. Some classes of corporations are under the supervision of more than one state authority. Public utility corporations, trust companies, title guarantee companies, and assessment life and accident insurance companies are all chartered by the secretary of state, but are under the supervision of the public utilities commission, the auditor, or the department of trade and commerce. With the present system of independent offices there is no uniformity of method with respect to the supervision and incorporation of business corporations. Supervision over important classes of business corporations has been vested in some of the elective state officers, whose primary functions have no relation to this work, and the enforcement of these laws is thus distinctively removed from the control of the Governor.

The Efficiency and Economy Committee recommended the organization of all the agencies charged with supervision of corporations into

⁶ U. S. Bureau of Education. A manual of educational legislation for the guidance of committees on education in the state legislatures, 1919, p. 8.

a single department known as the department of trade and commerce.⁷

Such a department was organized under the code and it has supervision of insurance companies and nominal supervision of public utility corporations.

In many of the states the supervision of business corporations is divided between a number of separate officials, without correlation or organization, as in Illinois. In some states the control of banking and insurance companies is vested in the same official. Under the reorganization enacted into law in Massachusetts in 1919, this combination was made. Virginia and North Carolina consolidate all offices and boards having jurisdiction over the organization and activities of business corporations into a single state corporation commission. These commissions also act as a state board of assessors for the assessment and taxation of certain classes of corporations.

Elections. The secretary of state, the voting machine commissioners, the state canvassing board, and the primary canvassing board, each have functions dealing with elections. The last two are ex-officio boards, but the membership of these boards is not identical. The secretary of state is ex-officio a voting machine commissioner. These several state election authorities introduce confusion and uncertainty into the election machinery of the state, which might well be simplified through consolidation. The Efficiency and Economy Committee recommended the creation of a state board of elections to consist of the Governor, secretary of state, and attorney general, to exercise the functions of these various agencies.⁸

Under a plan of reorganization of the government of New York state drafted by the reconstruction commission, a bureau of elections, is created in the department of state, of which department the secretary of state is the chief. The duties of the state board of canvassers, state board of examiners of voting machines, and the state superintendents of elections would be transferred to the proposed bureau of elections.⁹

Such a plan might be adopted in Illinois, thereby simplifying the election machinery and strengthening the office of the secretary of state.

⁷ Robinson, Maurice H. A report on supervision of corporations and related business. In the Report of the Efficiency and Economy Committee of Illinois, p. 697-752.

⁸ Illinois. Efficiency and Economy Committee. Report 1915, p. 71.

⁹ New York state reconstruction commission. Draft of summary of report on retrenchment and reorganization in the state government, 1919, p. 19.

VIII. CONCLUSIONS.

Problem of executive reorganization. There is an overlapping of functions and a lack of correlation in the duties of the constitutional and statutory state officers. This is mainly an overlapping of the statutory duties of constitutional officers with the duties of statutory officers, and the problem before the convention will be primarily to determine whether changes should be made as to present constitutional officers so as to permit a more ready coordination of functions. The constitutional duties of constitutional officers are relatively unimportant. This bulletin has dealt largely with the statutory organization, for its consideration is necessary in order to present the real problems at issue in the framing of an executive article in the constitution, and not with any notion that the convention will think it desirable to embody in the constitution the details of present statutes.

Reorganization in other states. This overlapping of functions has been a source of weakness in American state government generally and has led to reorganization and consolidation in many states. The Civil Administrative Code enacted in this state in 1917 is the most comprehensive plan of administrative consolidation that has been adopted in any state. There are, however, many departments of state government not included in the organization. Many of these departments may be correlated through statutory enactment, but the adoption of a centralized plan of state government would also involve constitutional changes. Statutory plans similar to the Civil Administrative Code have been adopted in Idaho and Nebraska.

The recent constitutional conventions in New York and Massachusetts spent considerable time on the problem of reorganization. In New York a plan was adopted providing for the creation of seventeen departments to perform the administrative functions of more than 160 existing offices, boards and agencies. The heads of most of these departments were to be appointed by the governor and were removable by him. The number of elective constitutional state officers was reduced from seven to four, leaving only the governor, lieutenant-governor, comptroller and attorney general elective. After the adoption of this plan all new administrative functions were to be assigned to one of the existing departments, and no new department were to be created by the legislature. (In this connection it may be noted that the constitutions of Nebraska and Arkansas contain limitations on the power of the legislature to create new boards and offices.) The proposed constitution of New York containing this plan of administrative reorganization was submitted to the people in November, 1915, and was defeated.

The Massachusetts Constitutional Convention adopted an amendment concerning reorganization which was ratified by the people on November 5, 1918. This amendment reads: "On or before January 1, 1921, the executive administrative work of the Commonwealth shall be organized in not more than twenty departments, in one of which every executive and administrative office, board and commission, except those officers serving directly under the Governor or Council, shall be placed. Such departments shall be under such supervision and regulation as the General Court may from time to time prescribe by law."

Accordingly, the General Court in 1919 enacted an administrative consolidation act, establishing twenty departments, excluding the Governor's office—the maximum number permitted under the constitutional amendment. The heads of four departments are the constitutional elective state officers and the other heads of departments are appointed by the Governor, with the approval of the Council, an independent body of nine members. The general scheme of organization is quite complicated and involved. Practically all the officials connected with the existing administrative agencies have been retained, their offices being continued in existence and placed under the several department without alteration either in personnel or duties. Seven boards which apparently did not fit into the scheme elsewhere are placed under the Governor and council.

The New York plan and the Massachusetts plan present alternative plans which might be adopted by the constitutional convention. The New York plan is an example of an incorporation of statutes into the constitution. In the light of the development of the executive department of Illinois in the last fifty years, the adaptability of this scheme for this state may well be doubted. Less than one-fourth of the boards, commissions and offices we now have were in existence when the Constitutional Convention met in 1870. It is possible that the next fifty years will present a similar development. Incorporation of a detailed plan of government in the constitution would make it difficult to correlate the functions of the various departments. Moreover, any scheme adopted might in a few years prove ill-adapted to the constantly changing and increasing functions of state government. The Massachusetts constitutional amendment adopted the plan of insulating the legislature to reorganize the executive departments, but the detailed plan worked out by legislation in Massachusetts is probably not as satisfactory as the present organization in Illinois.

Short ballot. The short ballot is closely related to all problems of executive reorganization. If any elective state officials are made appointive, it would be necessary to provide that the present state officials would serve the rest of their terms regardless of the change.

It has been suggested that the Governor's power of appointment should be extended to include some of the officers now elected by the people. The United States government and several of the states have made many offices appointive which are elective in this state. The advocates of the short ballot argue that the increase of the Governor's

appointive power would strengthen state government by providing a unified executive department. The political party is the principal bond of union among the elective officers of the executive department. The officers have a common cause, during the campaign, but afterward their community of interest is liable to center around the problem of re-election rather than the coordination of the branches of the executive department. Almost necessarily some of the elective state officers will, after they are in office, have political ambitions which run counter to the interests of other elective state officers.

Persons opposed to the short ballot fear the centralization of so much power in the hands of the chief executive. In this connection it may be noted that the president appoints the United States marshals and district attorneys, all the judges, officers of the army and navy, local customs and internal revenue collectors, a large number of post-masters and many others. In Pennsylvania the secretary of the commonwealth, the attorney general and the superintendent of public instruction are appointed by the Governor. The only state executive officer elected by the people in New Jersey and in several other states is the Governor. A separate bulletin entitled "The Short Ballot" has been issued concerning this subject.

Civil Service. Civil service is another important problem in state government. The object of civil service regulations is to get the state employes out of politics and away from the so-called "spoils system." Civil service attempts to fill administrative offices with the most fit persons available without regard to political affiliations. Most of the criticisms of the system have arisen from the fact that it has not always been administered in good faith.

Concerning the attitude of legislatures and constitutional conventions towards this subject, a report prepared for the New York state constitutional convention makes this statement:

"The so-called merit system of civil service reform originated in a laudable effort to abolish 'the spoils system' and the problem of the proper conditions of public employment from the point of view of efficient service to the state and justice to the employes has never received the serious consideration of any constitution or law making body."¹

The constitutions of New York, Ohio, California and Colorado contain provisions concerning civil service, and it is probable that some effort will be made to have the principle of civil service recognized in the constitution.²

Power of appointment and removal. A brief review of the powers of appointment and removal under the present constitution may not be inappropriate. These powers concern the legislative and judi-

¹ New York state constitutional convention commission. The constitution and government of the state of New York, p. 3.

² See Index digest of state constitutions, p. 145; The civil service clause in the constitution. In Academy of Political Science, the revision of the state constitution, 1914, pp. 251-262.

cial departments as well as the executive. Under the constitution the Governor, with the advice and consent of the Senate, appoints all officers whose offices are established by the constitution or by law and whose appointment or election is not otherwise provided for. The Governor's power to appoint did not begin to be effective until the constitution of 1848 forbade legislative appointments. Since 1848 the General Assembly, when it has established new offices, has ordinarily vested the power of appointment in the Governor. The Governor's appointing power has thus expanded with the expansion of state functions, and its present extent is due to statutes rather than to the constitution alone.

The General Assembly has a discretion to provide that appointments to new statutory offices shall be made by the Governor with the advice and consent of the senate, or by the Governor alone, or in some other manner, provided of course, that it does not itself seek to make appointments. Aside from the general authority in the Governor under article 5, section 10, just referred to (which vests little appointing power in the Governor in the absence of statute), substantially the only constitutional power of appointment vested in the Governor is that to fill certain vacancies in elective offices (article 5, section 20, and article 6, section 32). Power to make appointments may be vested in other elective constitutional state officers or in a new statutory creation such as the civil service commission.

Not only this, but in the view of the courts, the power to make appointments is not peculiarly a function of the executive department. "The constitution does not specifically confer the power to appoint officers on any department, and does not provide that the officers or employes of any department of the government can only be appointed by that department."³

In at least one case, however, the court has said that an appointment could properly be made only by the courts.⁴

And another case took the view that the courts could not be vested with power over the appointment and removal of executive officers.⁵

Even though the power of appointment may constitutionally be regarded as not a purely executive function, the fact remains that it is a function primarily exercised by the executive department and that the Governor either acting alone or by and with the advice and consent of the Senate, controls the appointment to all places of importance in the state government that have been created by statute. With respect to the Governor's power in this matter therefore, the important questions are: (1) that as to whether the appointing power shall be increased by reducing the number of elective state officers; and (2) that as to the continuance of Senate confirmation.

Under the express provisions of the constitution, the power of removal is much more complicated than that of appointment. By article 5, section 12, the Governor has "power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, or mal-

³ *People v. Brady*, 275 Ill. 261 (1916).

⁴ *Witter v. Cook County Commissioners*, 256 Ill. 616 (1912).

⁵ *City of Aurora v. Schoeberlein*, 230 Ill. 496 (1907).

feasance in office." This power of the Governor extends to all appointments made either by him alone or with the advice and consent of the senate, and in exercising the power the Governor need not hold hearings or assign reasons.⁶

In the case of *People v. Nellis*,⁷ the court held that it was proper for the General Assembly to vest in the Governor power to remove a sheriff under certain conditions, even though the sheriff is elected for a term fixed by the constitution, and the same principle would seem to apply to all other county officers created by the constitution.

The process of impeachment applies to "the Governor and all other civil officers of the state" (article 5, section 15). By article 6, section 30, the General Assembly may "for cause entered on the journals, upon due notice and opportunity of defense, remove from office any judge upon concurrence of three-fourths of all the members elected, of each house." Inasmuch as judges are civil officers of the state, they are subject to removal either by impeachment or by action under article 6, section 30, although other civil officers of the state (except as covered by the second sentence of article 6, section 30), are apparently removable only on impeachment. The power of impeachment apparently does not apply to officers expressly designated by the constitution as county officers.

The second sentence of article 6, section 30, provides that all officers other than judges mentioned in the judicial article "shall be removed from office on prosecution and final conviction, for misdemeanor in office." and this method of removal seems to be exclusive of any other methods. Officers other than judges mentioned in the judicial article include: boards of county commissioners⁸ (Article 6, section 17); state's attorneys (article 6, section 22); the reporter of the Supreme Court (article 6, section 9); certain clerks of courts (article 6, sections 10, 18, 27); and apparently justices of the peace.⁹ The state's attorney who controls the machinery of prosecution is removable only on prosecution and conviction.

Statutes vesting powers of appointment in officers other than the Governor may also vest a power of removal in such officers. Under the civil service law before 1917, the civil service commission had large control not only over the appointment but also over the removal of employes in the classified civil service. By amendment of 1917, however, power to remove subordinates vests in the head of an office, subject to review by the civil service commission if removal is alleged to be for political, racial or religious causes.

Removal by impeachment and by three-fourths of the two houses of the General Assembly have never been employed in this state and are unlikely to be employed, unless extraordinary conditions develop in a particular case. These methods may, therefore, be practically disregarded as elements to be considered. Although more easily capable of use, the same statement applies to a large extent to removal of cer-

⁶ *Wilcox v. People*, 90 Ill., 186 (1878).

⁷ 249 Ill. 12 (1911). See, also, *Donahue v. County of Will*, 100 Ill. 94.

⁸ But not the Cook county board. See *People v. McCormick*, 261 Ill., 413 (1914).

⁹ Compare section 21 with section 28, and see Report and Opinions of the Attorney General, 1914, pages 161, 1200.

tain officers upon conviction of misdemeanor in office. These three methods of removal are of small value as means of controlling the ordinary conduct of public officers.

The power of the Governor under the constitution to remove officers whom he may appoint, and the statutory power of certain other officers to remove their subordinates, are the only effective powers of removal now existing in the state government, although the principle laid down in the Nellis case is capable of effective application. The important questions facing the constitutional convention with respect to this matter are: (1) whether the Governor should be given power to appoint some officers now elective, such wider appointing power carrying with it automatically a similar increase in power of removal. (2) Whether the Governor should be given some express power of removal over state and local officers who are to remain elective. (3) Whether some change should not be made with respect to removals upon conviction of misdemeanor in office.

Enforcement of law by local officials. The control which the executive should be given over local officials is another problem for the framers of the constitution. Some such control is important in the enforcement of the laws. The executive departments exercise a slight control over local officials in the suppression of contagious diseases, assessments of property, distribution of the common school fund, appointment of county superintendents of highways and county mine inspectors, inspection of hospitals, sanitariums and various local charitable institutions, the collection of vital statistics and a few other cases. The Governor has the power to remove the sheriff in case a prisoner is taken from his custody by a mob through his fault.

Problem before convention. The constitutional convention is confronted with the problem of framing an executive article in a new constitution broad enough to form the basis for the operation of an efficient executive department. The functions of state government are constantly changing and increasing, and it is necessary to have broad constitutional provisions for the proper exercise of these functions. Details of executive organization in a constitution will occasion great practical difficulty, if the activities of the government of Illinois increase during the next fifty years in a manner at all comparable to their increase during the past half century.

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APPENDIX NO. 2. TEXT OF ARTICLE V. CONSTITUTION OF ILLINOIS.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Section 1. The executive department shall consist of a Governor, lieutenant-governor, secretary of state, auditor of public accounts, treasurer, superintendent of public instruction and attorney general, who shall each, with the exception of the treasurer, hold his office for the term of four years from the second Monday of January next after his election and until his successor is elected and qualified. They shall, except the lieutenant-governor, reside at the seat of government during their term of office, and keep the public records, books and papers there, and shall perform such duties as may be prescribed by law.

Sec. 2. The treasurer shall hold his office for the term of two years, and until his successor is elected and qualified; and shall be ineligible to said office for two years next after the end of the term for which he was elected. He may be required by the Governor to give reasonable additional security, and in default of so doing his office shall be deemed vacant.

Sec. 3. An election for Governor, lieutenant-governor, secretary of state, auditor of public accounts and attorney general shall be held on the Tuesday next after the first Monday of November, in the year of our Lord one thousand eight hundred and seventy-two, and every four years thereafter; for superintendent of public instruction, on the Tuesday next after the first Monday of November in the year one thousand eight hundred and seventy, and every four years thereafter; and for treasurer on the day last above mentioned, and every two years thereafter, at such places and in such manner as may be prescribed by law.

Sec. 4. The returns of every election for the above named officers shall be sealed up and transmitted by the returning officers to the secretary of state directed to the "Speaker of the House of Representatives," who shall, immediately after the organization of the House and before proceeding to other business, open and publish the same in the presence of a majority of each House of the General Assembly, who shall, for that purpose, assemble in the hall of the House of Representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more have an equal, and the highest number of votes, the General Assembly shall, by joint ballot, choose one of such persons for said office. Contested elections for all of said offices shall be determined by both houses of the

General Assembly, by joint ballot, in such manner as may be prescribed by law.

Sec. 5. No person shall be eligible to the office of Governor or lieutenant-governor who shall not have attained the age of 30 years, and been, for five years next preceding his election, a citizen of the United States and of this state. Neither the Governor, lieutenant-governor, auditor of public accounts, secretary of state, superintendent of public instruction, nor attorney general shall be eligible to any other office during the period for which he shall have been elected.

Sec. 6. The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.

Sec. 7. The Governor shall, at the commencement of each session and at the close of his term of office, give to the General Assembly information, by message, of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall account to the General Assembly, and accompany his message with a statement of all moneys received and paid out by him from any funds subject to his order, with vouchers, and at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes.

Sec. 8. The Governor may, on extraordinary occasions, convene the General Assembly, by proclamation, stating therein the purpose for which they are convened, and the General Assembly shall enter upon no business except that for which they were called together.

Sec. 9. In case of a disagreement between the two houses with respect to the time of adjournment, the Governor may, on the same being certified to him by the house first moving the adjournment, adjourn the General Assembly to such time as he thinks proper, not beyond the first day of the next regular session.

Sec. 10. The Governor shall nominate, and by and with the advice and consent of the Senate (a majority of all the Senators elected concurring by yeas and nays), appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the General Assembly.

Sec. 11. In case of a vacancy, during the recess of the Senate, in any office which is not elective, the Governor shall make a temporary appointment until the next meeting of the Senate, when he shall nominate some persons to fill such office; and any person so nominated who is confirmed by the Senate (a majority of all the Senators elected concurring by yeas and nays), shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate, or be appointed to the same office during the recess of the General Assembly.

Sec. 12. The Governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty or malfeasance in office; and he may declare his office vacant and fill the same as is herein provided in other cases of vacancy.

Sec. 13. The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, subject to such regulations as may be provided by law relative to the manner of applying therefor.

Sec. 14. The Governor shall be commander-in-chief of the military and naval forces of the State (except when they shall be called into the service of the United States), and may call out the same to execute laws, suppress insurrection and repel invasion.

Sec. 15. The Governor and all civil officers of the State shall be liable to impeachment for any misdemeanor in office.

Sec. 16. Every bill passed by the General Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the Governor; but in all such cases the vote of each house shall be determined by yeas and nays, to be entered *upon* the journal. *Bills making appropriations of money out of the treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. And if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law, as to the residue, in like manner as if he had signed it. The Governor shall then return the bill, with his objections to the items or sections of the same not approved by him, to the house in which the bill shall have originated, which house shall enter the objections at large upon its journal, and proceed to reconsider so much of said bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is hereinbefore provided in case of an entire bill returned by the Governor with his objections; and if any item or section of said bill not approved by the Governor shall be passed by two-thirds of the members elected to each of the two houses of the General Assembly, it shall become part of said law, notwithstanding the objections of the Governor.* Any bill which shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the General Assembly shall by their adjournment prevent its return, in which case it shall be filed with his objections in the office of the Secretary of State, within ten days after such adjournment, or become a law.¹

¹As modified by the third amendment to the Constitution of 1870. The joint resolution (L. 1883, p. 186) was adopted by the Senate February 28, 1883, concurred in by the House May 23, 1883, and ratified by the vote of the people November 4, 1884, and proclaimed adopted November 28, 1884.

The amendment is practically the original section with the addition of the paragraphs between the (*—*) and the substitution of the italicized word *upon* for the original word "on."

Sec. 17. In case of the death, conviction or impeachment, failure to qualify, resignation, absence from the state, or other disability of the Governor, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall be removed, shall devolve upon the lieutenant governor.

Sec. 18. The lieutenant governor shall be president of the Senate, and shall vote only when the Senate is equally divided. The Senate shall choose a president, *pro tempore*, to preside in case of the absence or impeachment of the lieutenant governor, or when he shall hold office of Governor.

Sec. 19. If there be no lieutenant governor, nor if the lieutenant governor shall, for any of the causes specified in section seventeen of this article, become incapable of performing the duties of the office, the president of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the speaker of the House of Representatives.

Sec. 20. If the office of auditor of public accounts, treasurer, secretary of state, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such a manner as provided by law. An account shall be kept by the officers of the executive department, and of all the public institutions of the state, of all moneys received or disbursed by them, severally, from all sources, and for every service performed, and a semi-annual report thereof be made to the Governor, under oath; and any officer who makes a false report shall be guilty of perjury, and punished accordingly.

Sec. 21. The officers of the executive department, and all the public institutions of the state, shall, at least ten days preceding each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports to the General Assembly together with the reports of the judge of the Supreme Court of defects in the constitution and laws; and the Governor may at any time require information in writing, under oath, from the officers of the executive department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

Sec. 22. There shall be a seal of the state, which shall be called the "Great Seal of the State of Illinois," which shall be kept by the secretary of state, and used by him, officially, as directed by law.

Sec. 23. The officers named in this article shall receive for their services a salary, to be established by law, which shall not be increased or diminished during their official terms, and they shall not, after the expiration of the terms of those in office at the adoption of this Constitution, receive to their own use any fees, costs, perquisites of office, or other compensation. And all fees that may hereafter be payable by law for any services performed by any officer provided for in this

article of the Constitution, shall be paid in advance into the State treasury.

Sec. 24. An office is a public position created by the Constitution or law, continuing during the pleasure of the appointing power, or for a fixed time, with a successor elected or appointed. An employment is an agency, for a temporary purpose, which ceases when that purpose is accomplished.

Sec. 25. All civil officers, except members of the General Assembly and such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of.....according to the best of my ability."

And no other oath, declaration or test shall be required as a qualification.

CONSTITUTIONAL CONVENTION

BULLETIN No. 10

The Judicial Department, Jury, Grand Jury and Claims Against the State



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I. SUMMARY.

This bulletin presents a detailed survey of the organization and operation of the present judicial system of Illinois, together with a brief review of proposals of change. The judicial power to declare laws unconstitutional has been much discussed, and a separate chapter has been devoted to this subject. The jury and grand jury constitute an integral part of the judicial system and are therefore treated in this bulletin, rather than in the bulletin on the bill of rights.

The constitution expressly provides that the state shall never be made defendant in any court of law or equity, but the subject of claims against the state bears a close relation to judicial functions and has therefore been discussed in this bulletin. In Bulletin No. 4 on State and Local Finance will be found comments upon private claims in connection with the appropriation policy of the state.

Bulletin No. 14 on Economic and Industrial problems contains a discussion of injunctions in labor cases. This subject, while one with respect to the exercise of a judicial function, did not seem to bear a close relationship to the other problems discussed in this bulletin. Judicial appointments and the removal of judicial officers are dealt with briefly in this bulletin. The subject of removals through legislative action is discussed in Bulletin No. 8 on the legislative department; and a review of the appointing and removing power will be found in Bulletin No. 9, on the executive department. In Bulletin No. 9 will also be found a brief discussion of the pardoning power.

In a review of the judicial organization of this state, the things which stand out most clearly are (1) the lack of unity in the organization and (2) the overlapping of jurisdiction of the several trial courts. The lack of unity in the judicial system makes it difficult to obtain information about all parts of the judicial organization, and in this study it has been necessary to investigate in detail the working of the courts in typical counties and circuits. The shortness of time rendered it impossible to investigate all counties and all circuits.

The lack of unity and overlapping of jurisdiction are really but two aspects of the same problem, for under a unified judicial system there would almost necessarily be less duplication of court machinery. The lack of unity and the overlapping of jurisdictions appear more clearly in Cook County than in other counties of the state, because of the larger amount of judicial business in that county. The Municipal Court of Chicago, whose creation was made possible by the constitutional amendment of 1904, is the one example in the state of a large court with a unified organization, but the unity in this case is one merely within that court itself, and there is no unity of judicial organization among the several courts exercising jurisdiction within Cook County.

If steps are taken toward a more unified court organization, it will hardly be the function of the constitutional convention to embody all the details of such an organization in the constitution itself. The judicial organization prescribed by the constitution of 1848 was probably a satisfactory one in the year when it was adopted, but that system was not capable of statutory expansion, and soon became highly unsatisfactory, for the constitution was substantially impossible to change and the state was rapidly increasing in population. To some extent the same statement may be made regarding the judicial organization in the constitution of 1870.

This bulletin seeks to review two types of proposals for constitutional change: (1) Proposals which contemplate a substantially complete reorganization of the judicial system, such as those for a unified court system, with but one series of trial courts. (2) Those which assume that the system will remain substantially as at present, but contemplate changes to meet specific defects now thought to exist in the system. Proposals of this character relate to such matters as the constitution of the appellate courts, and to jurisdiction in testamentary trusts.

Acknowledgment is made to the Supreme Court for its courtesy in preparing the tables which appear on Appendix No. 3 and permitting their use in this bulletin.

II. DEVELOPMENT OF THE JUDICIAL ORGANIZATION OF ILLINOIS.

Since the adoption of the first constitution in 1818 there have been many changes in the judicial organization in the state of Illinois. As the population has increased new courts have been established, and the jurisdiction of existing courts has been increased or diminished. Changes have been made in the manner of selecting judges and clerks and in their tenure of office.

Each new constitution has retained much of the former judicial article, merely changing the parts that had proved objectionable and adding matter to meet conditions not covered by the former constitution. In some instances statutory provisions that have proved successful have been incorporated in the new constitution, and usually the existing courts have been retained. This method of changing the judicial article has caused each constitution to contain more detail than the preceding one.

The constitution of 1818. Article IV of the constitution of 1818 provided for the establishment of the courts. The judicial power was vested "in one supreme court, and such inferior courts as the general assembly shall from time to time ordain and establish."¹ The Supreme Court was to consist of a chief justice and three associate justices, with power given to the general assembly to increase the number of justices after the year 1824. The supreme court was to sit only at the seat of government, but each justice was also required to sit as a circuit court judge until 1824, but not thereafter unless required by law. The supreme court was given appellate jurisdiction only, except in cases relating to the revenue, in cases of mandamus and such cases of impeachment as might be tried before it. All judges were to be appointed by joint ballot of both branches of the general assembly and were to hold their offices during good behavior. Judges could be removed for any reasonable cause not sufficient for impeachment on address of two-thirds of each branch of the general assembly. After 1824 the general assembly was authorized to fix the salaries of judges, but such salaries could not be diminished during their continuance in office. All clerks were appointed by the judges.

The first session of the general assembly convened at Kaskaskia October 5, 1818. At the second session which convened in January,

¹ Constitution of 1818, Article IV, Sec. 1.

1819, the general assembly, acting under the power conferred by the constitution to create inferior courts, established the county commissioners' court. This court was composed of three county commissioners. The powers conferred upon it were chiefly ministerial. The act creating the court of county commissioners gave it jurisdiction throughout the county "in all matters and things concerning the county revenue, and regulating and imposing the county tax; . . . power to grant licenses for ferries and taverns; and all other licenses and things that may bring in a county revenue; . . . jurisdiction in all cases of public roads, canals, turnpike roads and toll bridges, where the law does not prohibit the said jurisdiction of said courts; and . . . power and jurisdiction to issue all kinds of writs, warrants, process and proceedings, by the clerk throughout the state, to the necessary execution of the power and jurisdiction with which this court is or may be vested by law."² It was also provided that the act should not be construed to give the court jurisdiction in any civil or criminal suit other than cases where the matter or thing brought before the court related to the public concerns of the county generally.³ It was given charge of all county business⁴ and was also given authority to take proofs of wills, grant letters testamentary and of administration, to sell real estate to pay debts of intestates, to appoint guardians for minors, and to transact generally the work of a probate court.⁵ When the probate courts were established in 1821 the county commissioners' court was deprived of all probate jurisdiction.

The circuit courts were also established at the second session of the general assembly in 1819. As the constitution provided that until 1824 each justice of the supreme court in addition to his duties in the supreme court should also sit as a circuit judge, no judges were appointed for this court. The act creating circuit courts required that they should be held at least twice a year in each county, and provided that they should have jurisdiction "in all causes, matters and things at common law and in chancery arising in each of the counties in their respective circuits where the debt or demand exceeds the sum of twenty dollars."⁶

The general assembly that established the circuit court and the county commissioners' court also carried out the mandate of the constitution to appoint justices of the peace. It provided that justices of the peace should be appointed by the general assembly, and that they should have jurisdiction of debts and demands that did not exceed one hundred dollars. Appeals could be taken from the justices of the peace to the circuit court where the judgment exceeded the sum of four dollars.⁷ In 1826 the general assembly provided that justices of the peace should be elected by the voters every four years.⁸

In 1821 the general assembly established courts of probate in each county. One probate judge in each county was appointed by the

² Laws of 1819, pages 175-176.

³ Laws of 1819, page 176.

⁴ Laws of 1819, page 176.

⁵ Laws of 1819, pages 223-233.

⁶ Laws of 1819, page 380.

⁷ Laws of 1819, page 185.

⁸ Laws of 1827, page 255.

general assembly. These judges were to hold office during good behavior. Probate courts were given exclusive jurisdiction in matters relating to proofs of last wills and testaments, the granting of letters testamentary, the settlement of all estates of deceased persons and the appointment of guardians for minors. They were also given power to hear and determine applications for discharge from imprisonment for debt. Appeals were taken to the circuit court.⁹

In 1837 the probate court act was amended to provide that in August, 1837, and in August, 1839, and every fourth year thereafter, an additional justice of the peace should be elected in each county to be styled the probate justice of the peace. These probate justices were given in addition to the jurisdiction conferred upon justices of the peace, the jurisdiction that had been conferred upon probate judges. They were to hold the probate court.¹⁰ The office of probate judge was abolished. This act not only placed the election of the judge of a court of record in the hands of the people, but also provided a term of four years. Before this time all judicial officers, except justices of the peace, had been appointed by the general assembly, during good behavior. In 1845 the term of probate justices was reduced to two years.¹¹

In 1824 the general assembly acting upon the power conferred by the constitution provided that thereafter judges of the supreme court should not hold circuit court. It divided the state into five circuits and provided for the appointment of five circuit judges. This change did not meet with popular approval. It was criticised as unwarrantable extravagance.¹² The general assembly of 1826-27 repealed the act of 1824, turned the newly appointed circuit court judges out of office, and required that each judge of the supreme court should sit as a circuit judge. This act divided the state into four circuits. The number of judges of the supreme court was not increased until 1841. In that year the general assembly, actuated by political motives, passed a bill increasing the number of judges of the supreme court to nine. The bill was vetoed by the council of revision, which consisted of the governor and supreme court judges, but was passed over the veto.¹³

In 1829 the general assembly passed an act creating a fifth circuit, which act provided for the election of one circuit judge by the general assembly.¹⁴ As a result of this act there were five circuits, four of them presided over by supreme court judges and one by a specially elected circuit judge. In 1835 a sixth circuit was added,¹⁵ in 1837 a seventh¹⁶ and in 1839 an eighth and ninth.¹⁷ Circuit judges were elected for each additional circuit created. In 1840 there were, therefore, nine circuits, presided over by four supreme court judges and five circuit judges.

⁹ Laws of 1820-21, page 119ff.

¹⁰ Laws of 1836-37, pages 176-177.

¹¹ Laws, 1844-45, page 28.

¹² F. B. Crossley, *Courts and Lawyers of Illinois*, Vol. 1, page 167.

¹³ Laws, 1840-41, p. 173.

¹⁴ Revised Laws, 1833, p. 147.

¹⁵ Laws, 1834-35, p. 153.

¹⁶ Laws, 1836-37, p. 113.

¹⁷ Laws, 1838-39, p. 155.

In 1841 the general assembly passed an act which turned out of office the five circuit judges,¹⁸ increased the number of supreme court judges from four to nine, each supreme court judge performing circuit duties in one of the nine circuits.

No further changes were made in the organization of the supreme or circuit courts until 1848.

Under the power granted to the general assembly to establish inferior courts several special local courts for counties and cities were created.

Acts incorporating the cities of Chicago and Alton were passed in 1837. Both of these acts made provision for the establishment in each city of a municipal court with jurisdiction concurrent with that of the circuit court.¹⁹

Special local courts were established in Cook County and in Jo Daviess County in 1845.²⁰ They were called respectively the county court of Cook County and the county court of Jo Daviess County. Each of these courts had concurrent jurisdiction with the circuit court. These two courts were presided over by a single judge.

The constitution of 1848. The constitution of 1818 was a very flexible instrument. The judicial article contained only eight sections. It defined the jurisdiction and organization of the supreme court,²¹ but gave the general assembly nearly unlimited power to establish inferior courts and to provide for their jurisdiction and organization.²² This constitution provided that all judges should be elected by joint ballot of both houses of the general assembly;²³ that the general assembly after 1824 could increase the number of supreme court justices;²⁴ that the judges of the supreme court and the inferior courts should hold their office during good behavior;²⁵ and that the supreme court and the circuit courts should appoint their own clerks.²⁶ Supreme court judges could be removed by impeachment or upon address of the legislature.

In 1848 there were in existence justice of the peace courts having a limited jurisdiction where the debt or demand did not exceed \$100; probate courts in each county presided over by a probate justice of the peace, and having, in addition to the usual jurisdiction of justices of the peace, jurisdiction of probate matters; the county commissioners' court composed of three county commissioners, and having jurisdiction of county matters; the circuit courts each held by a justice of the supreme court, and having original jurisdiction in all cases at law and equity when the debt or demand exceeded \$20.00, and in all criminal cases, and appellate jurisdiction in all appeals from inferior

¹⁸ Laws, 1840-41, p. 173.

¹⁹ Laws of 1836-37, p. 75; Laws of 1837, special session, p. 25.

²⁰ Revised Statutes, 1845, Appendices X-XI.

²¹ Constitution of 1818, Art. IV, Sec. 2.

²² Constitution of 1818, Art. IV, Sec. 1.

²³ Constitution of 1818, Art. IV, Sec. 4.

²⁴ Constitution of 1818, Art. IV, Sec. 3.

²⁵ Constitution of 1818, Art. IV, Sec. 4.

²⁶ Constitution of 1818, Art. IV, Sec. 6.

courts; the supreme court consisting of nine judges, having appellate jurisdiction only, except in cases relating to the revenue, and in cases of mandamus and impeachment. Justices of the peace and probate justices of the peace were elected by the voters. All other judges were appointed by the general assembly.

The power to increase the number of judges of the supreme court had been used for political purposes in 1841. The state was heavily in debt due to its unfortunate banking experiences and internal improvement schemes. There was a distrust of the general assembly. Previous to 1818 nearly all of the states appointed judges for life, but by 1848 there was a general tendency toward the popular election of judges for short terms. All of these conditions were reflected in the constitution of 1848.

The constitution of 1848 contained much more detail than the constitution of 1818. There were two reasons for this. The first was the desire of the convention to curtail the power of the general assembly on account of previous abuses of such power. This resulted in the insertion into the constitution of provisions which prevented the general assembly from changing the organization prescribed by the constitution, and made the constitution of 1848 a very rigid instrument. The other reason was the tendency of constitutional conventions to adopt and embody in the constitutions prepared by them plans or schemes which have already been put into operation and proved satisfactory. This tendency is indicated in the constitution of 1848 in the provisions relating to the inferior courts.²⁷ The system provided by the general assembly under the constitution of 1818 worked satisfactorily and the convention of 1847 embodied it with few changes into the constitution.

The supreme court, under the constitution of 1848, consisted of three judges, who were elected by the people for a term of nine years. In order to avoid such situations as arose in 1841 the general assembly was denied power to increase the number of judges of this court. The jurisdiction of the supreme court was increased by giving it original jurisdiction in habeas corpus. The constitution of 1818 required the supreme court to be held at the seat of government. The constitution of 1848 divided the state into three grand judicial divisions, and required court to be held annually in each division. The salary of judges of the supreme court was fixed at \$1,200 and the salary of circuit judges at \$1,000. The general assembly was without authority to increase these salaries. The power to appoint clerks was taken from the courts by providing that clerks of the supreme and circuit courts should be elected.

The constitution of 1848 fixed the number of circuits at nine, the number already existing, and permitted the general assembly to increase this number. It provided that the circuit court should have jurisdiction in all cases at law and equity and in all cases of appeals from inferior courts, and that at least two terms of court should be held annually in each county. These provisions were taken over from the statutes. One circuit judge was elected in each circuit for a term of six years.

²⁷ Constitutional Conventions of Illinois, page 15.

County courts were established with the jurisdiction which had previously been conferred upon probate courts. The general assembly was authorized to confer other jurisdiction upon this court. The county judge, sitting with such justices of the peace as might be provided by law, was required to hold terms for the transaction of county business, but power was vested in the general assembly to provide for the management of county affairs in counties which should adopt township organization, and in such counties the management of the fiscal concerns of the county by the county court was to be dispensed with.²⁸ Judges of the county courts were to be elected for a term of four years. The general assembly was given power to fix the salary of these judges.

The constitution of 1848 provided for justices of the peace who were to be elected for a term of four years, and who were to have such jurisdiction as might be conferred by law.

One state's attorney was to be elected in each circuit, but the general assembly was given power to provide for the election of a county attorney in each county in lieu of the state's attorney provided for in the constitution.

The general assembly was deprived of power to create courts, except city courts. City courts were required to have a uniform organization and jurisdiction.

The county courts of Cook County and JoDavie's County, which had been established in 1845, were continued by the schedule to the constitution.

The constitution of 1848 provided a more rigid court system by withdrawing from the general assembly power to create courts, with the exception of city courts. It also deprived the general assembly of power to fix the salaries of supreme and circuit court judges. It changed the tenure of judges from good behavior to a short term; took the power of appointing judges from the general assembly by making all judges elective officers, and deprived the courts of power to appoint clerks by providing that clerks of court should be elected by the voters.

Legislation under the constitution of 1848. As the power of the general assembly over the courts was restricted by the constitution of 1848, the legislation pertaining to the judicial organization was not so extensive during the period following 1848 as it had been prior to that time.

The establishment and organization of the county court was completed in 1849. This court was given the jurisdiction of the old probate courts and concurrent jurisdiction with the circuit court in applications for the sale of real estate to pay debts. Judges of the county court were made conservators of the peace and were, in addition, to have the jurisdiction of justices of the peace. Two justices of the peace were to be elected in each county to sit with the county judge for the transaction of county business.²⁹ Under the township organi-

²⁸ Constitution 1848, Art. VII, Sec. 6.

²⁹ Laws of 1849 (1st session) pages 62-67.

zation acts of 1849 and 1851 the county business was transferred from the county court to the board of supervisors in counties which adopted township organization.³⁰

Under the power conferred by the constitution to create inferior courts in cities, the general assembly established recorders' courts, courts of common pleas and city courts in various cities. Recorders' courts were established in Chicago in 1853, in LaSalle and Peru in 1857, and in Peoria in 1861. Courts of common pleas were established in Cairo in 1855; in Aurora and Elgin in 1857 (these two courts were consolidated in 1859); and in Amboy, Mattoon and Sparta in 1869. The city court of Alton was established in 1859. The Peoria recorder's court was abolished in 1863. In 1855 an act was passed which provided that all inferior courts established in cities should have concurrent jurisdiction with circuit courts in all civil and criminal matters except murder and treason.³¹

In 1849 the county court of Cook County, which had been established in 1845 and which was continued by the schedule to the constitution of 1848 was changed to the Cook County court of common pleas. In 1859 the Cook County court of common pleas was changed to the superior court of Chicago, and provision was made for the election of three judges.

Proposed constitution of 1862. During the period from 1850 to 1860 the population of the state increased from 850,000 to 1,700,000. This increase was accompanied by a rapid industrial development. An increased amount of business came before the courts as a result of the growth and development of the state. The supreme court, consisting of three judges, could not be expected to take care of the added amount of business. The general assembly could not increase the number of supreme court judges. The salaries of the supreme court judges and of the circuit court judges as fixed by the constitution of 1848 had proved inadequate. The general assembly had created additional circuits which were not needed, and had created city courts for political purposes.

To remedy these faults the proposed constitution gave the general assembly power to increase the number of supreme court judges to five; provided that the salaries of the judges of the supreme and circuit courts should be prescribed by law; restricted the power of the general assembly to create new circuits by providing that circuits could be increased or diminished only at the session of the general assembly six years after the adoption of the constitution and every six years thereafter, and that the increase or diminution should not be more than one circuit at any session; deprived the general assembly of power to create city courts by placing the judicial power in a supreme court, circuit courts, county courts and justices of the peace.

The courts that were provided for by the constitution of 1848, except city courts, were continued by the proposed constitution of

³⁰ *People v Brown*, 11 Ill. 478 (1850).

³¹ *Laws of 1855*, page 147.

1862. In addition to these courts probate judges were to be elected in counties having a population exceeding one hundred thousand. Nearly all of the provisions of the judicial article of the constitution of 1848 were carried forward and some statutory provisions were embodied in the proposed constitution, which was rejected by the people.

The constitution of 1870. The constitutional convention of 1869-70 in framing the judicial article found the problems that had existed in 1862. The business and population of the state had continued to increase and likewise the amount of litigation to be disposed of by the courts. A supreme court consisting of three members was inadequate to handle the business that came before it. The constitution of 1848 had fixed the salary of judges of the supreme court at \$1,200, and the salary of the circuit court judges at \$1,000, without giving the general assembly power to increase these salaries. These salaries had proved inadequate. The general assembly had attempted to relieve this situation by authorizing the justices of the supreme court to report amendments to the laws to the general assembly. Each justice was authorized to employ a clerk to aid him in so reporting amendments, and for this service and for clerk hire each justice was allowed \$1,600 per year.³² Each circuit judge received \$1,000 per year for reporting imperfections of the laws to the supreme court,³³ and a fee of \$1.00 for each suit filed.³⁴ The general assembly under the constitution of 1848 could increase the number of circuits at will. The number of circuits had been increased from nine, the number established by the constitution of 1848, to twenty-nine. Twenty-nine circuits were far more than were necessary.³⁵ The general assembly had continued to create city courts. It was contended that many of these were established for the purpose of providing positions for politicians.³⁶ As the laws regarding courts were not required to be uniform, many acts had been passed providing special jurisdiction for particular county courts. The city of Chicago and Cook County had increased more rapidly in population than the other parts of the state, and a judicial system that was suitable for the down-state counties was inadequate for Cook County. In some other larger counties additional courts were needed.

In framing the new judicial article the convention of 1869-70 followed the plan that had been adopted by former conventions. It endeavored to correct the unsatisfactory provisions by adding detail without attempting to discard anything that had proved desirable. Certain statutory provisions that were thought to be successful were adopted and embodied in the new constitution.

³² Laws of 1865, page 127.

³³ Laws, 1869, page 49. Debates & Proceedings of the Constitutional Convention of 1870, page 1,043.

³⁴ Laws of Illinois, 1863, p. 49.

³⁵ Debates and Proceedings of the Constitutional Convention of 1870, page 1,043.

³⁶ Debates and Proceedings of the Constitutional Convention of 1870, page 975.

The constitution of 1870 attempted to remedy the faults of the existing judicial system by (1) increasing the number of judges of the supreme court from three to seven, and providing that after the year 1874 inferior appellate courts could be created, (2) authorizing the general assembly to fix the salaries of judges of the supreme and circuit courts, and prohibiting these judges from receiving other benefits or performing other judicial duties which carried emoluments, (3) limiting the circuits to one for every one hundred thousand inhabitants, and prohibiting changes in these circuits, except at the legislative session next preceding the election of circuit judges therein (the general assembly, however, was permitted to divide the state into judicial circuits of greater population and territory and provide for the election therein of not exceeding four judges), (4) requiring that all laws relating to courts should be general and of uniform operation and that the organization, jurisdiction, powers, proceedings and practice of courts of the same class or grade should be uniform, (5) organizing in detail the judicial system of Cook County, making this county a judicial circuit, and providing that one judge could be added to either the circuit or superior court of Cook County for each additional 50,000 inhabitants that the county contained over 400,000, (6) permitting the general assembly to establish probate courts in counties having a population of over 50,000.

Several other changes were made by the constitution of 1870. The age at which a person was eligible to become a judge of the supreme court was decreased from 35 years to 30 years, and the corresponding age of circuit judges from 30 to 25. For the election of supreme court judges the state was divided into seven districts, and the general assembly was permitted to change these districts only "at the session of the general assembly next preceding the election of judges therein", and then only on the rule of equality of population. These districts were required to be formed from contiguous counties. One or more terms of the supreme court for the northern division were to be held in the city of Chicago whenever the city of Chicago or Cook County provided a suitable library, and the general assembly was permitted to alter, increase or diminish the judicial divisions. The vote of the general assembly necessary to remove a judge was increased from a two-thirds vote of all members elected to both houses to a concurrence of three-fourths of all members elected.

Two existing statutory provisions were embodied in the judicial article of the constitution of 1870. The first was that the supreme court should appoint a reporter of its decisions; the other provision was that the judges of inferior courts should report defects and omissions in the laws to the supreme court, and that the judges of the supreme court should report such defects and omissions in the constitution and laws as they might find to the governor.

Legislation under the constitution of 1870. As a whole the constitution of 1870 provides a more flexible judicial system than was

afforded by the preceding constitution. Consequently more important legislation has been enacted since 1870 than during the period from 1848 to 1870.

Supreme court. Acting under the authority conferred upon it by the constitution to alter, increase or diminish the grand judicial divisions, the general assembly in 1897 passed an act³⁷ providing that for the purpose of holding terms of the supreme court and for the election of the clerk of this court, the state shall constitute one grand judicial division. This act also provides that the terms of the supreme court shall be held at Springfield only.

Under its constitutional authority to change the boundaries of the districts for the election of supreme court judges, the general assembly in 1903 passed an act designed to change the boundaries of the fourth district.³⁸ By this act Rock Island County was transferred from the sixth to the fourth district, Mercer, Warren and Henderson counties from the fifth to the fourth district, and Pike and Scott counties from the fourth to the second district. Notwithstanding the fact that there would be no election of judges in the second, fifth and sixth districts, the districts incidentally changed by this act, until after the next session of the general assembly,³⁹ the act was declared valid.⁴⁰ No other changes have been made in boundaries of the supreme court election districts, although the seventh district now contains nearly one-half of the population of the state.

The most important enactment with respect to the supreme court is the so-called certiorari act of 1909 (amendment to section 121 of the Practice Act), which makes the decisions of the appellate courts final in a large number of cases.

Appellate courts. Acting under the power conferred upon it to create inferior appellate courts, the general assembly in 1877 established the appellate court.⁴¹ By this act the state is divided into four districts. Cook County constitutes the first district, the remainder of the northern grand division of the supreme court the second, and the other two grand divisions of the supreme court the third and fourth districts respectively. Each court is held by three of the judges of the circuit court who are assigned to this duty by the supreme court for a term of three years. These courts have appellate jurisdiction only, and by the so-called certiorari act of 1909 their decisions are final in a large number of cases.

In order to relieve the congested condition of the docket of the appellate court in Cook County, the general assembly passed an act in 1897 providing for branch appellate courts in any district where the number of pending cases exceeded 250 at any term.⁴² The appellate

³⁷ Hurd's Revised Statutes, Chap. 37, Sec. 2-4.

³⁸ Hurd's Revised Statutes, Chap. 37, Secs. 1a-c.

³⁹ Section 5 of Article VI of the constitution reads: "The boundaries of the districts may be changed at the session of the general assembly next preceding the election of judges therein, and at no other time; but whenever such alterations shall be made the same shall be upon the rule of equality of population, as nearly as the county boundaries will allow, and the districts shall be composed of contiguous counties, in as nearly compact form as circumstances will permit".

⁴⁰ *People v. Rose*, 203 Ill. 46 (1903).

⁴¹ Hurd's Revised Statutes, Chap. 37, Secs. 18-35.

⁴² Hurd's Revised Statutes, Chap. 37, Sec. 35b.

court act was again amended in 1911 to authorize the employment of assistant judges.⁴³ The operation of the amendment was, however, limited to a two-year period, and no action was taken under it.

Circuit courts and the superior court of Cook County. Acting under the constitutional authority to create larger circuits than those prescribed in section 13 of the judicial article of the constitution, the general assembly in 1877 passed an act which divided the state outside of Cook County into thirteen circuits. This act also provided for the election of three judges in each circuit.⁴⁴ One of the reasons for granting the general assembly this power was to permit judges in these circuits to interchange so each could hear the class of cases for which he was best qualified.⁴⁵ Each circuit judge holds court in such counties as may be agreed upon by the judges of that circuit. In case of disagreement the supreme court assigns counties to the judges. The circuits were increased to seventeen in 1897.⁴⁶

In 1909 an act was passed which provides that the supreme court or any judge thereof in vacation may upon request assign judges to assist in other circuits than the one in which they are elected.⁴⁷

The number of judges of the circuit and superior courts of Cook County has been increased until each of these courts now has twenty judges.

Probate courts. In 1877 the general assembly acting under the power conferred upon it by the constitution established probate courts in all counties having a population of 100,000 or more. In 1881 this act was amended so as to extend its provisions to all counties in the state having a population of 70,000 or over.⁴⁸

City courts. The general assembly under the constitution of 1848 had unlimited power to create city courts. As they had created unnecessary courts in small cities, certain members of the constitutional convention of 1869-70 endeavored to limit the power of the general assembly by prescribing that city courts could be established only in cities having a population of over 5,000. Friends of the city courts prevented this limitation. The constitution did provide, however, that laws relating to courts must be general.

In 1874 an act was passed which provided that city courts might be established in any city containing a population of over 5,000, whenever the city or common council should adopt a resolution to submit the question to the qualified voters of such city and two-thirds of the votes cast should be in favor of the establishment of such court.⁴⁹ The act of 1874 was repealed by an act in 1901. The act of 1901 provides that city courts may be established in cities having a population of 3,000 or more.⁵⁰

The municipal court of Chicago. The constitution of 1870 had provided that justices of the peace in the city of Chicago should be

⁴³ Hurd's Revised Statutes, Chap. 37, Sec. 359.

⁴⁴ Jones & Addington Illinois Statutes Annotated. Chap. 37, Sec. 3065.

⁴⁵ Debates and Proceedings of the constitutional convention of 1870, page 1140.

⁴⁶ Hurd's Revised Statutes, Chap. 37, Sec. 73.

⁴⁷ Hurd's Revised Statutes, Chap. 37, Sec. 821.

⁴⁸ Hurd's Revised Statutes, Chap. 37, Secs. 216-239.

⁴⁹ Hurd's R. S. 1874, Ch. 37, Sec. 211.

⁵⁰ Hurd's Revised Statutes, Chap. 37, Sec. 260.

appointed by the governor "by and with the advice and consent of the senate (but only upon the recommendation of a majority of the judges of the circuit, superior and county court)". Regardless of this precaution, some unscrupulous persons succeeded in getting appointed justices of the peace. The practice prevailed of starting suits before justices of the peace who resided in the most distant and inaccessible part of the county from the defendant. It was often more expensive to defend a suit than to pay the demand. Ungrounded suits were frequent. In 1881 an act was passed which was expected to remedy some of the evils of the justice of the peace system in Cook County. This act⁵¹ provided that each county of the state should constitute a justice's district, except Cook County, which was divided into two districts, the City of Chicago constituting one district and the territory outside of the city and within the county the other district, and to the limits of such districts the jurisdiction of all justices of the peace therein was expressly limited. This act was declared unconstitutional⁵² on the ground that it conflicted with the constitutional provision that the jurisdiction of justices of the peace shall be uniform.⁵³ The evils of the justice of the peace system in Chicago and Cook County finally became unbearable.

In 1904 the constitution was amended by adopting Section 34 of Article IV. This section provides among other things that in event that municipal courts are established in Chicago the general assembly shall have power to prescribe the practice for these courts, to abolish the justices of the peace in Chicago, and to limit the jurisdiction of the justices of the peace of Cook County outside of Chicago to that territory.

The general assembly acting under the authority given it by Section 34 of Article IV of the constitution passed the Chicago municipal court act in 1905.⁵⁴ This act establishes the municipal court of Chicago, prescribes the practice to be followed in this court, abolishes justices of the peace in Chicago, and limits the jurisdiction of justices of the peace of Cook County outside of Chicago to that territory.

Summary. The judicial article in the constitution of 1818 was brief and contained mostly matter of a fundamental character. Under this constitution the general assembly had nearly unlimited power. It could create courts, appoint judges, and change the circuits. This constitution provided that judges should hold their office during good behavior. At the time of its adoption the people seemed to distrust the executive and judicial departments.

Between 1818 and 1848 the general assembly plunged the state into debt by creating state banks, which proved a failure, and by aiding internal improvements. The general assembly used its power to reorganize the supreme court for political purposes. When the consti-

⁵¹ Laws of 1881, page 103.

⁵² *People v. Meech*, 101 Ill. 200 (1881).

⁵³ Constitution of 1870, Art. VI, Sec. 21.

⁵⁴ Hurd's Revised Statutes, Chap. 37, Secs. 264-330.

tution of 1848 was adopted the people distrusted the general assembly and its power was greatly curtailed. The demand for elective officers caused the power of appointing judges to be taken from the general assembly. The movement for financial retrenchment caused the salaries of judges to be fixed at a low figure.

The judicial system provided by the constitution of 1848 proved to be inadequate to meet the needs of the unforeseen increase in population and business. The salaries fixed by the constitution proved to be inadequate. The general assembly had been deprived of its power to create new courts, or to increase the number of judges of the supreme court or to increase the salaries of the judges of the supreme and circuit courts. A convention was called in 1862 to remedy these conditions, but the constitution framed by it was rejected. The constitution of 1870 relieved the situation by increasing the number of supreme court judges, and by permitting the general assembly to create appellate and probate courts and to fix the salaries of judges.

The plan of each convention in dealing with the judicial article has been to retain all of the former unobjectionable provisions, change the objectionable parts to meet new conditions, and to add new provisions. Not only have the unobjectionable provisions of the former constitution been retained, but in many instances statutory provisions that had been thought to be successful have been adopted and embodied in the new constitution. This has also caused each new constitution to contain more matter not of a fundamental character.

Each constitution has contained more detail and has been longer than the preceding one. The constitution of 1818 was a very flexible instrument. In order to curtail the power of the general assembly because of certain abuses, the judicial system was made very rigid by adopting much detail in the constitution of 1848. In order to give the needed flexibility to the judicial system more detail was incorporated in the judicial article of the constitution of 1870.

III. STRUCTURE OF THE PRESENT JUDICIAL ORGANIZATION OF ILLINOIS.

All of the judicial powers in the State of Illinois are vested in courts established or authorized by the constitution. Section 1 of Article VI provides that "the judicial powers, except as in this article is otherwise provided, shall be vested in one Supreme Court, Circuit Courts, County courts, Justices of the Peace, Police Magistrates, and in such courts as may be created by law in and for cities and incorporated towns." Sections 23, 24 and 25 provide for the Superior Court of Cook County; Section 26 for the Criminal Court of Cook County; Section 11 authorizes the establishment of inferior appellate courts, and section 20 the establishment of probate courts in counties having a population of over 50,000.

In 1904 the constitution was amended by adopting Section 34 of Article IV. This amendment made possible the establishment of the Municipal Court of Chicago.

Section 26 of Article IV of the constitution reads: "The State of Illinois shall never be made defendant in any court of law or equity". For the purpose of passing on claims against the state there has been established an organization which, although not a court in the proper sense, is called the Court of Claims.

The common law practice as changed by statute is used in Illinois. The general assembly has made many changes, but the distinction between law and equity is retained.

The Supreme Court.

(a) *Organization.* The Constitution of Illinois provides in detail for the organization of the supreme court.

Article VI, Section 2, states that the supreme court shall consist of seven judges. The article further specifies that one of these judges shall be chief justice, that four shall constitute a quorum, and that the concurrence of four shall be necessary to every decision.

The constitution prescribes that no person shall be eligible to be elected judge of the supreme court unless he is at least 30 years of age; a citizen of the United States; a resident of the state for 5 years next preceding his election, and a resident of the district for which he is elected.

As organized by the constitution, the State of Illinois was divided into three grand judicial divisions; one or more terms for the northern

division were to be held in Chicago; the general assembly was given the power to change the judicial divisions, and the time and places of holding court. Exercising this authority, the general assembly in 1897 consolidated the grand divisions, provided that the supreme court should be held at Springfield, and that the terms should commence on the first Tuesday of October, December, February, April and June of each year.

The constitution provides that the judges of the supreme court shall hold their office for a term of nine years. The supreme court as it existed between 1848 and 1870 consisted of three judges. On May 13, 1870, when the present constitution was adopted by the constitutional convention one of the three judges of this court had an unexpired term of three years, another an unexpired term of six years, while the term of the third expired on the first Monday in June, 1870. Section 6 of Article VI of the new constitution provided for the election of the four new judges on July 2, 1870, the date on which the question of the ratification of the new constitution was submitted to the people. Five judges were, therefore, elected in 1870, the four new judges and the successor to the judge whose term expired in June, 1870. Accordingly, five judges are now elected at the one time, one judge three years thereafter and one judge six years after the election of the five judges.

For the purpose of electing judges of the Supreme Court, the constitution divides the state into seven districts. The constitution states: "The boundaries of the districts may be changed at the session of the General Assembly next preceding the election of judges therein, and at no other time; but whenever such alterations shall be made the same shall be upon the rule of equality of population as nearly as county boundaries will allow, and the districts shall be composed of contiguous counties, in as nearly compact form as circumstances will permit. The alteration of the districts shall not affect the tenure of office of any judge."¹

Some question has arisen as to the meaning of the constitutional provision for changing the boundaries of the supreme court election districts. One possible construction of this provision is that when any change is made all districts should be considered and involved in the change.² Since the districts can be changed only at the session of the general assembly preceding the election of judges in the districts changed, this method of changing the boundaries of the districts obviously brings complications. To follow this construction literally would preclude any change. If it is intended that the districts can be changed at the session next preceding the election of the majority of judges, two districts can not be changed, as that session of the general assembly would not be the one preceding the election of judges in those two districts. If on the other hand any district can be changed, the change must necessarily affect other districts. In some of the districts incidentally changed there may be no election of the supreme court judge until after the next session of the general assembly. The su-

¹ Constitution of 1870, Article VI, Sec. 5.

² Judges in the 1st, 2nd, 3rd, 6th and 7th districts were elected in 1870, the judge in the 5th district in 1873 and in the 4th district in 1876.

preme court has construed this provision of the constitution to give the general assembly power to change any district at the session of the general assembly next preceding the election of the supreme court judge in that district, without considering or changing all of the districts, and regardless of the fact that in other districts incidentally changed there will be no election of judges until after the next session of the general assembly.³

The constitution provides for a reporter of decisions of the supreme court. He is appointed by the court for a term of four years. Provision is also made in the constitution for the election of a clerk of the supreme court for each of the three grand divisions. Upon the consolidation of the grand divisions the statutes provided that thereafter only one clerk should be elected.⁴ The term of office of the clerk is six years.⁵ He is now elected by a popular vote of the whole state.⁶

(b) *Original jurisdiction.* Section 2 of Article VI of the constitution confers upon the supreme court "original jurisdiction in cases relating to revenue, in mandamus and habeas corpus, and appellate jurisdiction in all other cases."

The original jurisdiction of the supreme court is limited to cases relating to the revenue, mandamus and habeas corpus. No other original jurisdiction can be conferred upon it by the general assembly⁷ and it can exercise no other original jurisdiction.⁸ This original jurisdiction of the supreme court is concurrent with other courts of original jurisdiction.⁹ The supreme court is not required to exercise its original jurisdiction in all cases relating to the revenue, in mandamus, and habeas corpus that the parties may desire to bring before it.¹⁰ In *People ex rel. Kocourek v. Chicago*, 193 Ill. 507, it is said that original jurisdiction is conferred upon the supreme court in mandamus to protect the rights, interests and franchises of the state, and the rights and interests of the whole people, to enforce the performance of high official duties affecting the public at large, and in cases of emergency to adjudicate matters affecting local public interests, or private rights, when there is no other adequate remedy, and the exercise of such jurisdiction is necessary to prevent a failure of justice, and that the supreme court is vested with the discretion to decide in any case whether it is of such character as to call for the exercise of original jurisdiction.

(c) *Appellate jurisdiction.* Section 2 of Article VI of the constitution confers upon the supreme court "original jurisdiction in cases relating to the revenue, in mandamus and habeas corpus, and appellate jurisdiction in all other cases". "In all other cases" does not mean that the supreme court has jurisdiction in all appeals, or that its appellate jurisdiction can not be limited.¹¹

³ *People v. Rose*, 203 Ill. 46 (1903).

⁴ *Hurd's Revised Statutes*, Chap. 37, Sec. 3a.

⁵ *Constitution of 1870*, Art. VI, Sec. 10.

⁶ *Hurd's Revised Statutes*, Chap. 37, Sec. 2.

⁷ *Canby v. Hartzell*, 167 Ill. 628 (1897).

⁸ *Courter v. Simpson Const. Co.*, 264 Ill. 488 (1914).

⁹ *Hundley & Rees v. Commissioners*, 67 Ill. 559, 563 (1873).

¹⁰ *People ex rel. Kocourek v. Chicago*, 193 Ill. 507 (1901).

¹¹ *Drainage Commissioners v. Harms*, 238 Ill. 414 (1909).

Section 2 of Article VI must be construed with Section 11 of the same Article. Section 11 provides that appeals may be taken from the Appellate Court to the Supreme Court "in all criminal cases and cases in which a franchise, or freehold, or the validity of a statute is involved." In *Young v. Stearns*, 91 Ill. 221, (1878), the court says: "There are only four classes of cases in which there is a constitutional right of appeal or writ of error to this court. These four classes are criminal cases and cases in which either a franchise, a freehold or the validity of a statute is involved. Even in these cases such constitutional right of appeal or writ of error is not the right of a direct appeal from or writ of error to the trial court, but such appeal or writ of error may be through the intermediary of the appellate court. It is for the legislature to determine, as to whether in all or some, or any of these cases the appeal shall be brought to this court or otherwise." Therefore, the appellate jurisdiction of the Supreme Court could be limited to these four classes of cases.

The Practice Act¹² directs that appeals shall be taken to the Supreme Court from the Circuit courts, the Superior Court of Cook County, County Courts and City Courts in all criminal cases above the grade of misdemeanors; in cases in which a franchise or a freehold, or the validity of a statute or the construction of the constitution is involved; in cases relating to the revenue, and in cases in which the state is interested as a party or otherwise. It also permits cases in which the validity of a municipal ordinance is involved to be taken directly to the Supreme Court from the trial court, if the trial judge certifies that in his opinion the public interest so requires.

Other statutes allow appeals to be taken to the Supreme Court from the Circuit Court in bills to restrain the disbursement of public moneys,¹³ from the decrees of the Circuit Court on applications to register land,¹⁴ from the Circuit or County Court in eminent domain cases,¹⁵ from the orders of the County or Circuit Court organizing drainage districts,¹⁶ from the judgment of the County Court assessing damages and benefits for constructing draining systems,¹⁷ from the final decrees of the County or Circuit Court in farm drainage matters,¹⁸ from the County Court in proceedings for sale of lands for taxes, and special assessments,¹⁹ from the Circuit or County Court in election contests,²⁰ from the County Court upon refusal of application to put name on or erase from election register,²¹ from the Circuit Court in cases arising under the workmen's compensation act,²² and from the Circuit Court of Sangamon County in reviews of the decisions of the Public Utilities Commission.²³

¹² Sec. 118, Chap. 110, Hurd's Revised Statutes.

¹³ Hurd's Revised Statutes, Chap. 102, Sec. 21.

¹⁴ Hurd's Revised Statutes, Chap. 30, Sec. 69.

¹⁵ Hurd's Revised Statutes, Chap. 47, Sec. 12.

¹⁶ Hurd's Revised Statutes, Chap. 42, Sec. 16.

¹⁷ Hurd's Revised Statutes, Chap. 42, Sec. 17b.

¹⁸ Hurd's Revised Statutes, Chap. 37, Sec. 82f.

¹⁹ Hurd's Revised Statutes, Chap. 120, Sec. 192.

²⁰ Hurd's Revised Statutes, Chap. 46, Sec. 123.

²¹ Hurd's Revised Statutes, Chap. 46, Sec. 208.

²² Hurd's Revised Statutes, Chap. 48, Sec. 144.

²³ Hurd's Revised Statutes, Chap. 111a, Sec. 69.

Appeals from the Appellate Court to the Supreme Court are also regulated by the Practice Act. Section 121 of that Act (as amended in 1909 by the so-called certiorari act) provides that, aside from cases in which appeals and writs of error are specifically required by the constitution to be allowed from the Appellate Courts to the Supreme Court, the judgments and decrees of the Appellate Courts shall be final, subject to the following two exceptions only:

(A) "In case a majority of the judges of the Appellate Court or any branch thereof shall be of the opinion that a case (regardless of the amount involved) decided by them involves a question of such importance either on account of principal or collateral interests, as that it should be passed upon by the Supreme Court, they may in such cases grant appeals to the Supreme Court on petition of the parties to the cause."

(B) "It shall be competent for the Supreme Court to require by certiorari or otherwise any such case to be certified to the Supreme Court for its review and determination; Provided, however, that in actions ex contractu (exclusive of actions involving a penalty) and in all cases sounding in damages, the judgment exclusive of costs shall be more than \$1,000."

Apparently misdemeanors are the only cases going to the Appellate Courts in which there is a constitutional right of appeal or writ of error to the supreme court. It is also provided that in those cases which may be brought from the Appellate Court to the Supreme Court, the Supreme Court can re-examine as to questions of law only.²⁴ The decision of the Appellate Court in all other matters is made final. The act making the decision of the Appellate Court final in all matters except those above mentioned was passed in 1909.²⁵

The Appellate Courts.

Appellate Courts were established in Illinois in 1877 pursuant to Section 11 of Article VI of the constitution, which provides that after the year 1874 inferior Appellate Courts of uniform organization and jurisdiction may be created in districts formed for that purpose.

(a) *Organization.* By the act creating Appellate Courts²⁶ four districts are established. These districts are the same as the old Grand Divisions of the Supreme Court, except that Cook County was made a separate district. By statute branch courts may be established when there are pending and undetermined over two hundred and fifty cases at any one term, and the justices or a majority of them shall request the Supreme Court in writing.²⁷ The terms are held in the first district at Chicago on the first Tuesdays of March and October of each year, in the second district at Ottawa on the first Tuesday in April and October of each year, in the third district at Springfield on the first Tuesday of

²⁴ Hurd's Revised Statutes, Chap. 110, Sec. 122.

²⁵ Hurd's Revised Statutes, Chap. 110, Sec. 121.

²⁶ Hurd's Revised Statutes, Chap. 37, Sec. 18.

²⁷ Hurd's Revised Statutes, Chap. 37, Sec. 35j to 35m.

April and October of each year, and in the fourth district at Mount Vernon on the fourth Tuesday in March and October of each year.²⁸

The constitution provides that the Appellate Courts shall be held by such number of circuit court judges as may be provided by law, but that no judge shall sit in review upon cases decided by himself. Other details of organization are prescribed by statute. Appellate Courts are held by three judges. These judges are assigned by the Supreme Court for a period of three years. They choose one of their own number for presiding justice. Appellate Courts are courts of record. All opinions must be in writing.²⁹

The constitution prohibits the judges of the Appellate Court from receiving additional salary for their services in the Appellate Court, but by statute it is provided that judges residing in counties having a population of less than 150,000, who are assigned or required to serve as judges in an Appellate Court sitting in a county having a population of over 150,000, may be allowed out of the treasury of the county where the court is sitting a sum not to exceed fifteen dollars per day for their expenses.³⁰

(b) *Jurisdiction.* The part of Section 11 of Article VI of the Constitution which relates to the jurisdiction of the Appellate Court reads as follows: "inferior appellate courts, of uniform organization and jurisdiction, may be created to which such appeals or writs of error as the general assembly may provide may be prosecuted from the circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court in all criminal cases, and cases in which a franchise or freehold or the validity of a statute is involved, and in such other cases as may be provided by law".

By this section the Appellate Court is limited to appellate jurisdiction. The legislature can not clothe it with³¹ nor can it exercise,³² original jurisdiction.

The only constitutional limitation on the appellate jurisdiction is that appeals and writs of error shall lie to the Supreme Court in the four classes of cases enumerated in the section above quoted. In all other cases the decisions of this court may be made final.

The Appellate Court Act³³ vests in the appellate court jurisdiction in all matters of appeal or writs of error from the final judgments, orders or decrees of any of the circuit courts and the Superior Court of Cook County, or county courts or city courts in any suit or proceeding at law or in chancery, other than criminal cases, not misdemeanors, and cases involving a franchise or freehold or the validity of a statute. The Practice Act³⁴ further limits the jurisdiction of this court by providing that the following cases shall be taken directly to the Supreme Court from the Circuit Court, the Superior Court of Cook County, County Courts and City Courts:

²⁸ Hurd's Revised Statutes, Chap. 37, Sec. 19.

²⁹ Hurd's Revised Statutes, Chap. 37, Sec. 18 to 35.

³⁰ Hurd's Revised Statutes, Chap. 37, Sec. 35n.

³¹ Hawkes v. People, 124 Ill. 560 (1888).

³² People ex rel. Lydston v. Hoyne, 262 Ill. 82 (1914).

³³ Hurd's Revised Statutes, Chap. 37, Sec. 25.

³⁴ Hurd's Revised Statutes, Chap. 110, Sec. 118.

- (1) All criminal cases above the grade of misdemeanors ;
- (2) Cases in which a franchise or
- (3) freehold, or
- (4) the validity of a statute, or
- (5) the construction of the constitution is involved ;
- (6) Cases in which the validity of a municipal ordinance is involved and the trial judge certifies that in his opinion the public interest so requires ;
- (7) Cases relating to revenue ;
- (8) Cases in which the state is interested as a party or otherwise.

Other statutes provide for appeals from the county or circuit court direct to the Supreme Court in various statutory proceedings.³⁵

As already noted, the Supreme Court may cause any contract case or case sounding in damages, where the judgment is over \$1,000 exclusive of costs and any case involving a penalty which has been decided by the Appellate Court to be certified to it (the Supreme Court) for review, and the majority of the judges of the Appellate Court by giving a certificate of importance may send any case which has been decided by them to the Supreme Court for review. In all other cases, save those in which the constitution gives a right of appeal to the Supreme Court, the decision of the Appellate Court is final.

The judgment of the Appellate Court is final as to all matters of fact in controversy, in any final determination of any cause or proceeding, except in chancery, where such determination is the result wholly or in part of a finding of facts different from the findings of the trial court.³⁶

Circuit Courts.

(a) *Organization.* The constitution vests in the General Assembly power to divide the state into judicial circuits and to provide for the election in each circuit of not to exceed four judges.³⁷ The general assembly has exercised this power. The State, exclusive of Cook County, is now divided into seventeen circuits. Three judges are elected for each circuit.³⁸ The constitution requires two terms of court to be held annually in each county.³⁹ It vests in the General Assembly the power to fix the times of holding court⁴⁰ and prohibits that body from changing the terms of holding court except at the session next preceding the election of judges. Extra terms may, however, be provided for at any session.⁴¹

It is provided by the constitution that judges of the circuit court shall be elected by popular vote for a term of six years ; that no person shall be eligible to the office of judge of the circuit or any inferior court unless he is at least twenty-five years of age, a citizen of the

³⁵ See p. 743.

³⁶ Hurd's Revised Statutes, Chap. 110, Sec. 120.

³⁷ Constitution 1870, Art. VI, Sec. 15.

³⁸ Hurd's Revised Statutes, Chap. 37, Sec. 74.

³⁹ Constitution 1870, Art. VI, Sec. 12.

⁴⁰ Constitution 1870, Art. VI, Sec. 14.

⁴¹ Constitution 1870, Art. VI, Sec. 14.

United States, and a resident of the State for five years next preceding his election, and a resident of the circuit, county, city or incorporated town for which he is elected.⁴² The statutes provide that the judges of each circuit may determine the manner of holding court in their circuit, but in case of disagreement the Chief Justice of the Supreme Court shall assign them to such counties in their circuits as he may determine.⁴³ Judges are prohibited by the constitution from receiving any other compensation than their salaries for the discharge of their official duties. The salary of judges can not be increased or diminished during their terms of office.⁴⁴ The general assembly fixes such salaries.⁴⁵ The judges of the circuit court, outside of Cook County, elected prior to the first Monday of June, 1919, receive five thousand dollars per year.⁴⁶ Those elected after the first Monday of June, 1919, receive six thousand five hundred dollars per year.⁴⁷

(b) *Jurisdiction.* The constitution provides that the Circuit Court shall have original jurisdiction in all causes in law and equity, and such appellate jurisdiction as may be provided by law.

The original jurisdiction of Circuit Courts can not be diminished or taken away by the legislature.⁴⁸ Concurrent jurisdiction may, however, be conferred upon other courts.

The circuit courts have original jurisdiction in cases where the general assembly creates a new statutory remedy for the recovery of property or for damages occasioned by the infringement of a right. They have no jurisdiction, however, in purely statutory proceedings which are not causes at law or equity, such as election contests, unless such jurisdiction is conferred by statute.⁴⁹

By statute the circuit court has been given exclusive original jurisdiction in contests of the election of judges of the supreme court, clerk of the supreme court, judges of the circuit court, judges of the superior court of Cook county, judges of the county courts, mayors of cities, presidents of county boards, presidents of villages, in reference to the removal of county seats, and in reference to any other subject that may be submitted to the vote of the people of the county. They are given concurrent jurisdiction with the county court in contests for the election of all other county, township and precinct officers.⁵⁰

It has also been given jurisdiction in certain proceedings in connection with the fish and game laws,⁵¹ in proceedings organizing farm drainage districts,⁵² and in partition proceedings.⁵³

The circuit court is also given jurisdiction in appeals from the disallowance of claims by the County Board.⁵⁴ The Circuit Court of

⁴² Constitution 1870, Art. VI, Sec. 17.

⁴³ Jones and Addington, Illinois Statutes Annotated, Chap. 37, Sec. 3067.

⁴⁴ Constitution 1870, Art. VI, Sec. 16.

⁴⁵ Constitution 1870, Art. VI, Sec. 16.

⁴⁶ Hurd's Revised Statutes, Chap. 53, Sec. 3.

⁴⁷ Laws 1919, p. 553.

⁴⁸ People v. Jacobson, 247 Ill. 394 (1910).

⁴⁹ Douglas v. Hutchinson, 183 Ill. 323 (1899).

⁵⁰ Hurd's Revised Statutes, Chap. 46, Secs. 96, 97, 98.

⁵¹ Hurd's Revised Statutes, Chap. 56, Sec. 47.

⁵² Hurd's Revised Statutes, Chap. 37, Sec. 82d.

⁵³ Hurd's Revised Statutes, Chap. 106, Sec. 1.

⁵⁴ Hurd's Revised Statutes, Chap. 34, Sec. 35.

Sangamon County is given jurisdiction to review the orders of the Public Utilities Commission.⁵⁵

The Constitution provides that the circuit courts shall have such appellate jurisdiction as may be provided by law. Appellate jurisdiction has been conferred by the general assembly upon the circuit court in all appeals from (a) justices of the peace,⁵⁶ except judgments confessed; (b) in appeals from the probate court in all cases except in proceedings for the sale of real estate to pay debts;⁵⁷ and (c) in appeals from the county court in all matters relating to the settlement of the estates of deceased persons, appointment of guardians and conservators and the settlement of their accounts, and in matters relating to apprentices.⁵⁸

In appeals from justices of the peace, and from probate and county courts a trial de novo is had in the circuit court.

Circuit, superior and criminal courts of Cook County. The constitution makes special provisions for the judicial organization of Cook County. The county constitutes one judicial circuit.⁵⁹ In addition to the circuit court there is in this county the superior court of Cook County and the criminal court of Cook county. The superior court of Cook County has the same jurisdiction as the circuit court. The criminal court has jurisdiction of all cases of a criminal or quasi criminal nature arising in the county.⁶⁰

Judges of the circuit and superior courts are elected for a term of six years.⁶¹ No judges are elected for the criminal court. Its terms are held by "one or more of the judges of the circuit or superior court of Cook County, as nearly as may be in alternation, as may be determined by said judges, or provided by law."⁶² The general assembly has the power to increase the number of judges of the circuit and superior courts of Cook County by adding one judge to either of these courts for every additional 50,000 inhabitants in the county over 400,000.⁶³ At the present time there are twenty judges for the circuit court and a like number for the superior court. The judges receive from the State the same salary as circuit judges in other parts of the State, and such additional salary from the county as may be prescribed by law.⁶⁴ It is provided by statute that the judges of the circuit and superior courts of Cook County shall receive from the county treasury such further compensation, in addition to the salary paid them by the

⁵⁵ Hurd's Revised Statutes, Chap. 111a, Sec. 68. Sec. 29 of Art. VI of the Constitution provides that the jurisdiction of courts shall be uniform. The Act allowing actions to set aside orders of the Public Utilities Commission to be brought in the circuit court of Sangamon County appears to be in conflict with this section, but the question has never been decided by the Supreme Court.

⁵⁶ Hurd's Revised Statutes, Chap. 79, Sec. 115.

⁵⁷ Hurd's Revised Statutes, Chap. 37, Sec. 226.

⁵⁸ Hurd's Revised Statutes, Chap. 37, Sec. 212.

⁵⁹ Constitution of 1870, Art. VI, Sec. 23.

⁶⁰ Constitution of 1870, Art. VI, Sec. 26.

⁶¹ Constitution of 1870, Art. VI, Sec. 23.

⁶² Constitution of 1870, Art. VI, Sec. 26.

⁶³ Constitution of 1870, Art. VI, Sec. 23.

⁶⁴ Constitution of 1870, Art. VI, Sec. 25.

state, as will make their total compensation \$12,000. Judges elected prior to the first Monday in June, 1919, receive five thousand dollars per annum from the state treasury and seven thousand dollars per annum from the county treasury; those elected after that date will receive six thousand five hundred dollars per year from the state treasury and five thousand five hundred dollars per year from the county treasury.⁶⁵

The constitution also provides that the judge having the shortest unexpired term shall be chief justice of the court of which he is a judge. The circuit, superior and criminal courts are independent of each other in all respects, except that judges of the circuit and superior courts are assigned to hold court in the criminal court. By statute it is provided that the terms of the superior court shall commence on the first Monday of every month and those of the circuit court and criminal court on the third Monday of every month.⁶⁶

County courts. The constitution provides that there shall be elected in each county one county judge and one county clerk, whose terms of office shall be four years.

The constitution further provides that county courts "shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians and conservators and settlement of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law."⁶⁷

When a probate court is established in a county, the county court is deprived of its jurisdiction (1) of probate matters, (2) settlement of the estates of deceased persons, (3) appointment of guardians and conservators and the settlement of their accounts, and (4) matters relating to apprentices.⁶⁸

The county court is given exclusive original jurisdiction by statute in the following cases:

1. Application to put names on or remove names from the register of voters.⁶⁹
2. Proceedings for the commitment of insane persons.⁷⁰
3. Application for the discharge from arrest or imprisonment of insolvent debtors.⁷¹
4. Assignments for the benefit of creditors.⁷²

It has been also granted concurrent jurisdiction with the Circuit Court in appeals from (1) justices of the peace and police magis-

⁶⁵ Hurd's Revised Statutes, Chap. 53, Sec. 61; Laws of Illinois, 1919, p. 553-4.

⁶⁶ Hurd's Revised Statutes, Chap. 37, Sec. 77.

⁶⁷ Constitution of 1870, Art. VI, Sec. 18.

⁶⁸ *Klokke v. Dodge*, 103 Ill. 125 (1882).

⁶⁹ Hurd's Revised Statutes, Chap. 46, Sec. 207.

⁷⁰ Hurd's Revised Statutes, Chap. 85, Sec. 3.

⁷¹ Hurd's Revised Statutes, Chap. 72, Sec. 1.

⁷² Hurd's Revised Statutes, Chap. 10b, Sec. 14.

crates,⁷⁴ (2) the classification of lands by drainage commissioners,⁷⁵ and (3) from the assessment of damages before justices of the peace for opening, altering or vacating roads.⁷⁶ In cases where such appeals are taken to the County Court, a trial de novo is had.

By statute County Courts are given original jurisdiction concurrent with the Circuit Court in the following cases:

(a) Cases in which justices of the peace have jurisdiction, where the amount claimed or value of the property in controversy does not exceed one thousand dollars.⁷⁷

(b) Eminent domain cases.⁷⁸

(c) Contest of elections for county, township and precinct offices.⁷⁹

(d) Matters pertaining to the organization of drainage districts.⁸⁰

(e) Proceedings to condemn unlawful devices for the killing of fish under the fish and game law.⁸¹

(f) Cases involving the treatment and care of dependent, neglected and delinquent children.⁸² In Cook County such cases are heard in what is termed the "juvenile court." This court is a branch of the circuit court of Cook County and is presided over by one of the judges of that court.⁸³

(g) Applications for mothers' pensions.⁸⁴

(h) Non-indictable offenses where the punishment is not imprisonment in the penitentiary or death. The phrase "non-indictable offenses" is used in this discussion to designate offenses which may under the constitution be prosecuted without indictment, although as a matter of fact such offenses are tried in the circuit court only on indictment.⁸⁵

It is provided by statute that the County Court in counties which do not have probate courts shall have both probate and law terms. The Probate terms begin on the first Monday of every month. The court is always open for the transaction of probate matters and for hearing applications for the discharge of insolvent debtors from arrest or imprisonment. Other matters are cognizable only at the law terms.⁸⁶ The law terms are fixed by the General Assembly at different times for the various counties. Appeals are taken from the County Court to the Circuit, Appellate, or Supreme Court. It is provided by statute that appeals and writs of error may be taken and prosecuted from the final orders, judgments and decrees of the County Court to the Supreme Court or the Appellate Court in proceedings for the confirmation of special assessments, in proceedings for the sale of lands for taxes and special assessments, and in all common law and attachment cases and

⁷⁴ Hurd's Revised Statutes, Chap. 37, Sec. 95.

⁷⁵ Hurd's Revised Statutes, Chap. 42, Sec. 101; Chap. 37, Sec. 82d.

⁷⁶ Hurd's Revised Statutes, Chap. 121, Sec. 88.

⁷⁷ Hurd's Revised Statutes, Chap. 37, Sec. 95.

⁷⁸ Hurd's Revised Statutes, Chap. 47, Sec. 2.

⁷⁹ Hurd's Revised Statutes, Chap. 46, Secs. 97, 98.

⁸⁰ Hurd's Revised Statutes, Chap. 37, Sec. 82d.

⁸¹ Hurd's Revised Statutes, Chap. 56, Sec. 47.

⁸² Hurd's Revised Statutes, Chap. 23, Sec. 169, 170.

⁸³ Hurd's Revised Statutes, Chap. 23, Sec. 171.

⁸⁴ Hurd's Revised Statutes, Chap. 23, Sec. 298.

⁸⁵ Hurd's Revised Statutes, Chap. 37, Sec. 95.

⁸⁶ Hurd's Revised Statutes, Chap. 37, Sec. 94.

cases of forcible entry and forcible detainer, and to the Circuit Court in all other matters. Appeals to the Circuit Court are tried de novo.⁸⁷

Other provisions relating to appeals from the County Court are found in statutes defining the jurisdiction of Appellate Courts and in the Practice Act. The Appellate Court Act⁸⁸ provides that the Appellate Court shall have jurisdiction of "all matters of appeal, or writs of error . . . from . . . the Circuit Courts . . . or County Courts . . . in any suit or proceeding at law or in chancery other than criminal cases, not misdemeanors, and cases involving a franchise or freehold or the validity of a statute." The Practice Act⁸⁹ provides that appeals from, and writs of error to, certain courts, including the County Court, shall be taken directly to the Appellate Court in all criminal matters below the grade of felony and directly to the Supreme Court in all criminal cases above the grade of misdemeanors, and in cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in cases relating to the revenue, or in which the state is interested as a party or otherwise.

Probate courts. Section 20 of Article VI of the constitution authorizes the General Assembly to provide for the establishment of probate courts in each county having a population of over 50,000, and provides for the election of a judge thereof whose term of office shall be the same as that of the County Judge, and who shall be elected at the same time and in the same manner as County judges. All other details of organization are left to the General Assembly.

The General Assembly has established probate courts in each county having a population of 70,000 or more.⁹⁰ The Probate Courts are held at the county seat. They are courts of record. The terms of these courts commence on the first Monday of each month.⁹¹ Judges are elected for a term of four years.⁹²

The part of Section 20 of Article VI of the constitution which deals with the jurisdiction of Probate Courts reads: "Said courts, when established, shall have original jurisdiction of all probate matters, the settlement of estates of deceased persons, the appointment of guardians and conservators, and settlement of their accounts; in all matters relating to apprentices, and in cases of sale of real estate of deceased persons for the payment of debts". The jurisdiction of probate courts is thus limited by the constitution to the particular subjects named. There is no general clause, as there is in respect to County Courts, which authorizes the legislature to extend the jurisdiction of

⁸⁷ Hurd's Revised Statutes, Chap. 37, Sec. 212-213.

⁸⁸ Hurd's Revised Statutes, Chap. 37, Sec. 25.

⁸⁹ Hurd's Revised Statutes, Chap. 110, Sec. 118.

⁹⁰ Hurd's Revised Statutes, Chap. 37, Sec. 216.

⁹¹ Hurd's Revised Statutes, Chap. 37, Sec. 221.

⁹² Hurd's Revised Statutes, Chap. 37, Sec. 218; Constitution of 1870, Art. VI, Sec. 32.

Probate Courts to subjects other than those specifically enumerated. In the case of *Frackelton v. Masters*, 249 Ill. 30, (1911) it was held that the administration of testamentary trusts is not a probate matter but a chancery matter, and that the legislature cannot extend the jurisdiction of probate courts to include the administration of such trusts.

By statute it is provided that appeals may be taken from the final orders, judgments and decrees of the Probate Court to the Circuit Court in all matters except in proceedings of executors, administrators, guardians and conservators for the sale of real estate. Appeals from the Probate Court are tried *de novo* in the Circuit Court. Appeals in proceedings for the sale of real estate are taken to the Appellate or Supreme Court.

City courts. The constitution vests the judicial power in certain enumerated courts, and in such courts as may be established by law in and for cities and incorporated towns. The only limitation of the power of the general assembly to establish city courts is that all laws relating to courts are required to be general and of uniform operation; and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, are required to be uniform.⁹³

The statutes provide that city courts may be established in any city containing a population of 3,000 or more.⁹⁴ To establish such a court the common council must submit a resolution or ordinance for a city court to the voters of the city, which resolution or ordinance must be adopted by a two-thirds vote.

City courts may be established to consist of one or more judges, according to the population, but can not consist of over five judges.⁹⁵

Judges are elected in the same manner as other city officials. They hold office for a term of four years. They qualify in the same manner and have the same powers as judges of the circuit court.⁹⁶

In cities having a population of less than 5,000, judges of the city courts receive a salary of \$500, which is paid out of the city treasury. In cities having a population of over 5,000, judges of the city court are paid a salary out of the state treasury. This salary is from \$1,500 to \$4,000, being graduated according to the population of the city.

The statutes prescribe that the city courts "shall have concurrent jurisdiction with the circuit court within the city in which the same may be in all civil cases both law and chancery, and in all criminal cases arising in said city, and in appeals from justices of the peace of said city."⁹⁷ "In all cases both at law and equity" does not include purely statutory proceedings such as contests of elections.⁹⁸

⁹³ Constitution of 1870, Art. VI, Sec. 29.

⁹⁴ Hurd's Revised Statutes, Chap. 37, Sec. 260.

⁹⁵ Hurd's Revised Statutes, Chap. 37, Sec. 260.

⁹⁶ Hurd's Revised Statutes, Chap. 37, Sec. 244.

⁹⁷ Hurd's Revised Statutes, Chap. 37, Sec. 240.

⁹⁸ *Brueggemann v. Young*, 208 Ill. 181 (1904).

The municipal court of Chicago. The municipal court of Chicago was created in 1905 by the general assembly. The authority of the general assembly to establish this court is derived from Section 1 of Article VI and Section 34 of Article IV of the constitution. Section 1 of Article VI vests the judicial power in certain enumerated courts and in such courts as may be provided by law in and for cities and incorporated towns. Section 34 of Article IV is an amendment to the constitution. It was adopted in 1904. Among other things it gives the general assembly power to provide a system of local municipal government for the city of Chicago, and in the event that municipal courts are created, to prescribe the jurisdiction and practice of these courts, to abolish justices of the peace in Chicago, and to limit the jurisdiction of justices of the peace in Cook County outside of Chicago to that territory.

All details as to the organization and jurisdiction of the municipal court of Chicago are prescribed by statute.⁹⁹

The municipal court is made up of a chief justice and thirty associate judges. The chief justice and associate judges are elected by the voters of the city as a whole. The election of the chief justice takes place every six years. Ten associate judges are elected every two years. The city council of Chicago is given authority to fix the salaries of the judges and to increase the number of judges to thirty-six.

The municipal court of Chicago is of particular interest in view of the fact that it was one of the first unified courts to be established in this country. The organization and operation of this court is discussed in a later chapter.¹

The municipal court of Chicago has unlimited jurisdiction of actions upon contract and actions for conversion or injury to personal property. It has also general jurisdiction in all cases where the plaintiff does not claim over \$1,000. It also has jurisdiction of criminal cases, in which the punishment is by fine or imprisonment other than in the penitentiary and in all other criminal cases which may be prosecuted otherwise than on indictment.

Justices of the peace and police magistrates. Section 21 of Article VI of the constitution provides as follows: "Justices of the peace, police magistrates, and constables shall be elected in and for such districts as are, or may be, provided by law, and the jurisdiction of such justices of the peace and police magistrates shall be uniform."

The statutes provide all details concerning the jurisdiction and election of justices of the peace. Two justices of the peace and two constables are elected in each town in counties under township organization, and in each precinct in counties not under township organization.² An additional justice of the peace and constable are elected in each township or precinct for every one thousand inhabitants exceeding two thousand inhabitants of such town or precinct, but the

⁹⁹ Hurd's Revised Statutes, Chap. 37, Sec. 264-330.

¹ See p. 776.

² Hurd's Revised Statutes, Chap. 79, Sec. 1.

number in any town or precinct is limited to five. The term of office of justices of the peace and constables is four years. Justices of the peace have jurisdiction in their respective counties (with the exception of those in Cook County) in certain classes of cases where the amount involved does not exceed three hundred dollars and in criminal cases punishable by fine where such fine does not exceed three hundred dollars. Justices of the peace may also issue warrants for persons charged with criminal offenses and upon hearing discharge such persons, or if there is probable cause to believe the prisoner guilty, commit him to jail for trial.

In towns, cities and villages incorporated under charters granted by special acts of the general assembly or under a general act there may also be elected a police magistrate.³ Police magistrates have the same jurisdiction as justices of the peace, and hold office for four years.⁴

In 1881 it was attempted to divide Cook County into two districts—the city of Chicago constituting one district, and the territory outside the city and within the county the other and to limit the jurisdiction of the justices of the peace in each district to the territory constituting such district. This act was declared unconstitutional on the ground that it contravened the provision of the constitution requiring the jurisdiction of justices of the peace to be uniform.⁵ In 1904 the constitution was amended by adopting Section 34 of Article IV. This amendment authorizes the legislature, upon the establishment of a municipal court for Chicago, to abolish justices of the peace in Chicago and limit the jurisdiction of those in Cook County outside of Chicago to the territory outside of that city. The general assembly exercised this authority in 1905.

The constitution authorizes a jury of less than twelve men in the trial of civil cases before a justice of the peace.⁶ Accordingly the legislature has provided as follows: "In all cases of trial before a justice of the peace, either party may have the cause tried by a jury, if he shall so demand before the trial is entered upon and will first pay the fees of the jurors. The number of jurors shall be six, or any greater number not exceeding twelve as either party may desire."⁷

³ Hurd's Revised Statutes, Chap. 24 Secs. 192, 249.

⁴ Hurd's Revised Statutes, Chap. 24, Sec. 192.

⁵ *People v. Meech*, 101 Ill. 200 (1882).

⁶ Section 5, Article II, Constitution of 1870.

⁷ Hurd's Revised Statutes, Chap. 79, Sec. 48.

IV. ANALYSIS OF WORKING OF JUDICIAL ORGANIZATION IN ILLINOIS.

In analyzing the operation of the judicial system in Illinois an attempt will be made, first of all, to present a picture of the court geography of the state. Beginning with the county as the judicial unit, the organization of the circuits, appellate court districts and supreme court districts will be set forth, and the location of the probate and city courts pointed out. The jurisdictional relationships of the constituent parts of the judicial organization will then be briefly discussed. This will be followed by a somewhat detailed discussion of the practical working of each part of the system, commencing with the justice of the peace courts. The working of the system as a whole will be shown in the different types of counties. The counties other than Cook are referred to, for the sake of brevity, as "down-state counties." The Chicago and Cook County situation will receive separate treatment.

Court geography of Illinois. In studying the court geography of Illinois reference should be made to the two maps inserted at pages 755 and 821 of this bulletin. The first map shows the counties, the circuits, and the appellate court districts. It also shows the city courts and the counties having probate courts. The second map shows the supreme court districts.

The unit of judicial organization in Illinois is the county. The jurisdiction of justices of the peace and police magistrates is limited by the county line. The county court and the probate court are county organizations. The circuit court in the down-state circuits is not a single court for the entire circuit. On the contrary the judges preside over a series of courts, one for each county, each court being administered as a distinct county organization. The jurisdiction of the state's attorney is confined to the county. The jury and the grand jury are county institutions. The supreme court of Illinois has held in *People v. Rodenberg*, 254 Ill. 386 (1912) that a trial court with jurisdiction in two counties or drawing jurors from two counties cannot be created. Both the civil and criminal law are administered through organizations built upon the county as the basic unit.

There are 102 counties in the state. Exclusive of Cook County, the various counties range in population from 7015 (Hardin county) to 119,870 (St. Clair county).¹ Four counties, Hardin, Calhoun, Henderson and Putnam have a population of less than 10,000. In area there is a variation from 173 square miles (Putnam county) to 1,191 square miles (McLean county).²

¹ Population figures are of 1910 census.

² For table showing the area and population of each county in the state, see appendix, page 892.

Each county has a county court. In Cook County and in the following nine down-state counties which have a population in excess of 70,000, there are also probate courts: Kane, La Salle, Madison, Peoria, Rock Island, Sangamon, St. Clair, Vermilion and Will. Counties having probate courts in addition to county courts are indicated on the map by a black square around the county seat.

There are 27 city courts in the state.³ The city courts are indicated on the map by stars. Four of the cities having city courts, Aurora, East St. Louis, Elgin and Moline, have a population of more than 25,000. One, Zion City, has less than 5,000 inhabitants. The remaining 22 city courts are located in cities now having populations ranging from 5,000 to 20,000. In five cities, Benton, Charleston, Harrisburg, Macomb and Marion, city courts are located at county seats. Eight of the 27 city courts are to be found in the mining area composed of Franklin, Jackson, Perry, Saline and Williamson counties. Three of these eight courts, those at Benton, Harrisburg and Marion are at county seats. Coles, Franklin, Kane, and Madison counties each has two city courts. In Coles and Franklin counties one of the two courts is at the county seat. Williamson county has three city courts, one at Marion, the county seat, and the other two at Herrin and Johnston City.

Exclusive of Cook County which, under the constitution of 1870, forms one judicial circuit, the state of Illinois is divided into seventeen circuits, each circuit being composed of contiguous counties. The various circuits are indicated on the map at page 755 by a distinctive shading scheme. The number of counties in the various circuits varies as does the population of the circuits. The second circuit contains twelve counties; the first and fourth, nine each; the eighth, eight; the third, seven; the sixth, seventh and ninth circuits, six each; the fifth, tenth, eleventh and fifteenth, five each; the fourteenth, sixteenth and seventeenth, four each; the twelfth and thirteenth, three each. In 1910 their population ranged from 133,127 in the fifteenth circuit to 310,267 in the third circuit. A table giving comparative statements of the populations of the various circuits by counties in 1890 (the census in effect at the time the present circuits were created),⁴ and 1910 is printed in the appendix on page 888.

The state is divided into four appellate court districts. The boundaries of the various districts are indicated on the map at page 755 by heavy black lines. Aside from Cook County, which comprises the first appellate district, the appellate districts, though composed of contiguous counties, in several instances include fractional parts of a circuit. The ninth, tenth and eleventh circuits are split, part of the counties of each being in the second appellate district and part in the third. Similarly the fourth circuit is split between the third and fourth appellate

³ City courts are located at Alton, Aurora, Beardstown, Benton, Canton, Carbondale, Charleston, Chicago Heights, Dekalb, Duquoin, East St. Louis, Elgin, Granite City, Harrisburg, Herrin, Johnston City, Kewanee, Litchfield, Macomb, Marion, Mattoon, Moline, Pana, Spring Valley, Sterling, West Frankfort, and Zion City.

⁴ See act of April 23, 1897, Hurd's Revised Statutes, Chap. 37, Sec. 73.

districts.⁵ A table giving the population of the various appellate districts by counties is printed in the appendix on page 886.

For the purpose of electing supreme court judges the state is divided into seven supreme court districts. These districts are shown on the map at page 821. The boundary lines of the supreme court districts intersect both circuit and appellate court districts. This would, however, seem to be immaterial when it is considered that the sole purpose of the supreme court district is to provide areas from which to elect the seven judges of the supreme court. The following table shows a considerable variation in the population of these districts:⁶

District	Population
First	605,250
Second	565,573
Third	631,746
Fourth	402,040
Fifth	400,263
Sixth	414,873
Seventh	2,618,846
Total	5,638,591

Jurisdictional relationships. Before proceeding to a detailed analysis of the working of the judicial system, it seems desirable to make a brief statement of the jurisdictional relationships of the various trial courts open to litigants in the different types of down-state counties, discussing in a general way possible choices of courts resulting from overlappings of jurisdiction. The appellate system will also be briefly outlined.

Types of down-state counties. The down-state counties fall into one of four types:

(1) Counties containing, in addition to the justice of the peace courts, a county court and a circuit court. This is the simplest type of judicial organization in the State. Seventy-six counties fall into this class.⁷

⁵ In the ninth circuit Henderson, Knox and Warren counties are in the second appellate district; Hancock, McDonough and Fulton are in the third. All of the counties of the tenth circuit are in the second appellate district except Tazewell, which is in the third. In the eleventh circuit Livingston and Woodford are in the second appellate district; Logan, McLean and Ford are in the third. In the fourth circuit Christian, Montgomery and Shelby counties are in the third appellate district; Clay, Effingham, Fayette, Jasper and Marion are in the fourth appellate district.

⁶ For more detailed statement of population of the supreme court districts by counties see appendix, page 885.

⁷ These counties are: Adams, Alexander, Bond, Boone, Brown, Calhoun, Carroll, Champaign, Clark, Clay, Clinton, Crawford, Cumberland, Dewitt, Douglas, Dupage, Edgar, Edwards, Effingham, Fayette, Ford, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jasper, Jefferson, Jersey, Jo Daviess, Johnson, Kankakee, Kendall, Knox, Lawrence, Lee, Livingston, Logan, McHenry, McLean, Macon, Macoupin, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Morgan, Moultrie, Ogle, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Schuyler, Scott, Shelby, Stark, Stephenson, Tazewell, Union, Wabash, Warren, Washington, Wayne, White, Winnebago, and Woodford.

(2) Counties which contain one or more city courts in addition to the justice of the peace courts, a county court and a circuit court. Type 2 comprises the following counties: Bureau, Cass, Christian, Coles, DeKalb, Franklin, Fulton, Henry, Jackson, Lake, McDonough, Montgomery, Perry, Saline, Whiteside, and Williamson.

(3) Counties which contain a probate court, one or more city courts, a county court, a circuit court, and the justice of the peace courts. This type adds a probate court to type 2 and a probate court and one or more city courts to type 1. This type includes Kane, Madison, Rock Island, and St. Clair counties.

(4) Counties containing justices of the peace courts, a county court, a probate court and a circuit court, but no city courts. This type adds a probate court to type 1, and omits the city court from types 2 and 3. Type 4 includes LaSalle, Peoria, Sangamon, Vermilion, and Will counties.

Type 1. The simplest type of judicial organization, which is represented by the first group of counties, contains, in addition to the justice of the peace courts, a circuit court and a county court. Justices of the peace and police magistrates have jurisdiction in criminal matters which are punishable only by a fine not exceeding \$300, and in a large variety of civil cases where the amount involved does not exceed \$300.⁸ The circuit court has original jurisdiction in all cases at law and in equity⁹ and in all criminal cases.¹⁰ The county court is, by the constitution, given jurisdiction in proceedings for the collection of taxes and assessments, and, in counties where there are no probate courts, jurisdiction in all probate matters.¹¹ This court has concurrent criminal jurisdiction with the circuit court in non-indictable offenses where the punishment is not imprisonment in the penitentiary or death.¹² In law matters it has concurrent jurisdiction with the circuit court in that class of cases in which justices of the peace have jurisdiction where the amount claimed or the value of the property in controversy does not exceed \$1,000.¹³ The circuit and county courts have concurrent original jurisdiction in various statutory proceedings and concurrent appellate jurisdiction in appeals from justices of the peace and police magistrates.¹⁴ Appeals from the probate court are in practically all cases taken to the circuit court, where a trial de novo is had.¹⁵

Let us now see what choices of courts are available to a litigant in counties of type 1 as a result of the overlappings of jurisdiction just pointed out. If his claim is a contract claim involving \$300 or less, or any other kind of claim for a similar amount justiciable in a court of a justice of the peace he may sue the defendant before any justice of the peace or police magistrate in the county or bring an action either in the circuit or county court. In other words, he may select a justice's court or either one of two courts of record. If the amount of the

⁸ Hurd's Revised Statutes, Chap. 79, Sec. 16.

⁹ Constitution, Art. VI, Sec. 12.

¹⁰ Hurd's Revised Statutes, Chap. 38, Sec. 392.

¹¹ Constitution, Art. VI, Secs. 18, 20.

¹² Hurd's Revised Statutes, Chap. 37, Sec. 95 and Chap. 38, Sec. 392.

¹³ Hurd's Revised Statutes, Chap. 37, Sec. 95.

¹⁴ Hurd's Revised Statutes, Chap. 37, Sec. 95.

¹⁵ Hurd's Revised Statutes, Chap. 37, Sec. 212.

claim is greater than \$300, he cannot bring his action before a justice of the peace. He may, however, sue either in the county court or the circuit court, provided the amount claimed is not greater than \$1,000. If greater than \$1,000, he is confined to the circuit court, since the jurisdiction of the county court in that kind of cases is limited to \$1,000. Chancery matters may be brought in the circuit court only. Misdemeanors may be prosecuted either in the county court or in the circuit court. If of a petty character they are also triable before a justice of the peace or police magistrate. The more serious crimes may be prosecuted only in the circuit court. Appeals from justices of the peace may be taken either to the circuit or county courts. The county court alone has original jurisdiction in probate matters; appeals from the county court in such cases must ordinarily be taken to the circuit court where a trial *de novo* is had.

Type 2. The second type of county contains all the courts of the first type. In addition it has one or more city courts. In other words, it has the justice of the peace courts, a county court, a circuit court, and the city court or courts. The city court has "concurrent jurisdiction with the circuit court within the city in which the same may be, in all civil cases both law and chancery, and in all criminal cases arising in said city and in appeals from justices of the peace of said city".¹⁶ Let us take Franklin County as an example of this type. This county has city courts at Benton, the county seat, and at West Frankfort. Since the jurisdiction of a city court in criminal cases is confined to crimes committed in the city, and since in civil cases its process does not run beyond the city limits, it can not take jurisdiction over crimes not committed within the city, or in civil cases where the defendant is not amenable to the process of the court. In cases not coming within the jurisdiction of one of the two city courts of Franklin County, the choice of courts available to the state's attorney or a plaintiff in a civil suit is the same as in the type of county already discussed. Suppose, however, that a crime is committed in Benton or in West Frankfort. If of a petty nature the defendant may be prosecuted either before a justice of the peace or police magistrate, or in the county, circuit or appropriate city court. If a misdemeanor of a kind beyond the jurisdiction of a justice of the peace or police magistrate, the state's attorney may prosecute in the county, circuit or city court provided it is a non-indictable offense. If an indictable offense the prosecuting authorities may still choose between the city court and the circuit court.

Similarly in a contract case involving \$300 or less, the plaintiff may, provided the situation is such that the defendant is subject to the process of one of the two city courts, bring suit in any one of four different tribunals. He may sue the defendant before any justice of the peace or police magistrate in Franklin County, or he may choose between the county court, the circuit court, and the appropriate city court. If the case involves over \$300, the justice of the peace loses jurisdiction. The plaintiff may, however, still proceed in the circuit court or the city court, or, if the amount claimed does not exceed

¹⁶ Hurd's Revised Statutes, Chap. 37, Sec. 240.

\$1,000, also in the county court. If the amount is over \$1,000, suit may be brought either in the city court or the circuit court. Chancery proceedings may be brought either in the circuit court or the city court. Appeals from justices of the peace in Benton and West Frankfort may be taken to the county court, the circuit court or the appropriate city court. The county court alone has original jurisdiction in probate matters. In various statutory proceedings the plaintiff may choose between the county court and the circuit court.

Type 3. Type 3, which includes the counties of Kane, Madison, Rock Island, and St. Clair, is like Type 2, except that here a distinct court, the probate court, relieves the county court of all probate matters. The probate court has exclusive original jurisdiction of probate matters, the settlement of the estates of deceased persons, the appointment of guardians and conservators and the settlement of their accounts, matters relating to apprentices, and cases of the sale of real estate of deceased persons for the payment of debts. Appeals from the probate court must ordinarily be taken to the circuit court, where a trial *de novo* is had.

Type 4. The fourth type of county is like the third except that it has no city courts. In other words, it has the justice of the peace courts, a county court, a probate court and a circuit court. It includes LaSalle, Peoria, Sangamon, Vermilion and Will counties. Aside from probate matters which, here, as in the preceding type, are taken from the county court and handled by a separate court, the system operates in these counties precisely as it does in counties of type 1.

Appeals. In addition to the trial courts there is the supreme court and an intermediate appellate court. The supreme court has original jurisdiction concurrent with other courts in cases relating to the revenue, and in mandamus and habeas corpus. The extent to which the supreme court will exercise its original jurisdiction has already been discussed.¹⁷ The appellate court has no original jurisdiction. The constitution gives a right of appeal to the supreme court in all criminal matters and in cases in which a franchise or freehold or the validity of a statute is involved, and in such other cases as may be provided by law.¹⁸ The practice act provides for a direct appeal to the supreme court in the four types of cases just specified except in the case of misdemeanors where an appeal must first be taken to the appellate court.¹⁹ The same act also provides for a direct appeal in cases involving the construction of the constitution, in cases in which the validity of a municipal ordinance is involved and the trial judge certifies that in his opinion the public interest so requires, in cases relating to revenue, and in cases in which the state is interested as a party or otherwise.²⁰ Other statutes establish a direct appeal to the supreme court from the county and circuit courts in various statutory proceedings, such as eminent domain cases, drainage matters, election contests, cases arising under the workmen's compensation act, and appeals from the circuit court of Sangamon county in review of the

¹⁷ See page 742.

¹⁸ Constitution, Art. VI, Sec. 11.

¹⁹ Hurd's Revised Statutes, Chap. 110, Sec. 118.

²⁰ Hurd's Revised Statutes, Chap. 110, Sec. 118.

decisions of the public utilities commission. In all other cases appeals must be taken to the appellate court. The decision of the appellate court in such cases is final unless the appellate court grants a certificate of importance or the supreme court a writ of certiorari, or unless the case is one in which there is a constitutional right of appeal to the supreme court.

A brief survey of the opportunities of the litigant under this system of appeals may prove of interest. We have already seen that in certain classes of proceedings the practice act and other statutes provide for a direct appeal to the supreme court. In a criminal case above the grade of misdemeanor, an eminent domain case, or a case involving a franchise, freehold, or the validity of a statute, the litigant may appeal directly from the circuit, county, or city court, as the case may be, to the supreme court. In such proceedings there is but one court of review. This represents the simplest type of case.

Let us next consider cases begun in the county, circuit or city courts which do not come within the terms of a statute providing for a direct appeal to the supreme court. The plaintiff sues the defendant on a simple contract claim for \$900 in one of these courts. In such a case an appeal first lies to the appellate court. If the defeated litigant in the appellate court is able to secure a certificate of importance, the case may be taken from the appellate court to the supreme court. In such event the case is reviewed twice.

Let us next examine the situation with respect to certain kinds of cases brought in justice of the peace courts. Let us assume the plaintiff sues the defendant on a claim which does not fall within any statute permitting a direct appeal to the supreme court. A simple contract claim for \$275 will give us a case directly in point. From the decision of the justice of the peace in such a case an appeal may be taken either to the county or circuit court, or, if the case arises in a city where there is a city court, to the city court, where a trial *de novo* is had. From any of these courts an appeal lies to the appellate court. It is conceivable that the case may go from the appellate court to the supreme court by certificate of importance. If so, the case is passed upon by four different tribunals, two trial courts and two courts of review.

A similar situation arises with respect to probate matters. Appeals in most probate matters must be prosecuted from the county or probate court to the circuit court, where the case is tried *de novo*. From the decision of the circuit court an appeal lies to the appellate court, unless the case be one in which the statute gives a direct appeal to the supreme court. If the defeated litigant in the appellate court is able to secure a certificate of importance or writ of certiorari, he may take the case to the supreme court. Again the litigant secures a hearing in four different courts.

The constituent parts of the judicial organization. It is now proposed to undertake a somewhat detailed discussion, from the point of view of the down-state county, of the actual working of each part of

the judicial organization, commencing with the justice of the peace courts. An attempt will then be made to picture the practical working of the system as a whole. The discussion of the down-state situation will be followed by a somewhat detailed treatment of the judicial situation in Chicago and Cook County.

The justice of the peace courts. There are approximately 2,900 justices of the peace and 650 police magistrates in the State of Illinois. Under the statute now in force, each town in counties under township organization and each election precinct in counties not under township organization elects two justices of the peace. They are entitled to one additional justice for each 1,000 inhabitants exceeding 2,000 inhabitants in such town or precinct, with a limit of five justices in any town or precinct.²¹ In towns, cities and villages incorporated under charters granted by special acts of the general assembly or under a general act, there may also be elected a police magistrate.²²

Justices of the peace and police magistrates now have jurisdiction in criminal actions in which punishment is by fine only and does not exceed \$300 and in a large variety of civil cases where the amount claimed does not exceed \$300.²³ The pecuniary limit of their jurisdiction was raised from \$200 to \$300 in 1917.²⁴ Police magistrates have the same jurisdiction as justices of the peace.²⁵ Civil cases may thus be brought before a police magistrate, and criminal cases before a justice of the peace. In most communities it is the practice of the city or village police department to prosecute its cases before the police magistrate, the theory being that this officer is elected to handle police cases. But there is no hard and fast practice. In communities with a police magistrate large numbers of offenders are sometimes prosecuted before justices of the peace. Police magistrates, on the other hand, sometimes develop a considerable amount of civil business.

There is a surplusage of justices of the peace in practically all communities. Under the statute referred to above, a town or election precinct of 5,000 is entitled to five justices of the peace. Larger towns or precincts are entitled to no more. The result is that a community of 5,000 may have the same number of justices as a community of 50,000. A somewhat careful examination was made of the amount of justice of the peace business in three cities located respectively in the northern, central and southern parts of the State. The populations of these cities are, roughly speaking, 50,000, 40,000 and 12,000. Each has five justices of the peace, and a police magistrate. In each city the business was found concentrated in the hands of two or three men. Although the maximum number of justices permitted by law has no relation to the amount of business in the community, still it was found in the largest of these cities that the greater part of the business was in the hands of three men, and that there was just about enough work in that city to keep two justices busy at full time.

²¹ Hurd's Revised Statutes, Chap. 79, Sec. 1.

²² Hurd's Revised Statutes, Chap. 24, Secs. 192, 249.

²³ Hurd's Revised Statutes, Chap. 79, Sec. 16.

²⁴ Hurd's Revised Statutes, Chap. 79, Sec. 16.

²⁵ Hurd's Revised Statutes, Chap. 24, Sec. 192.

Several communities in the State have not elected the full number of justices to which they are entitled, and now and then a justice is elected but fails to qualify.

The justice of the peace courts are quite generally used in that class of cases which come within the limits of the justice's jurisdiction. In some instances litigants try their own cases. In a very large number of cases there is no contest in the justice's court; judgment is by default or the parties settle the case. Defaults are particularly numerous in cases where the amount involved is trifling. They are also not uncommon in cases involving larger amounts where the defendant is a corporation and proposes to take an appeal. Of three justices questioned on this subject, one in each of the communities referred to in the preceding paragraph, the first placed the number of defaults at 80 per cent, the second at 90 per cent and the third at from 80 per cent to 90 per cent. In contested cases demands for jury trials vary. In some justice's courts they are relatively infrequent. In others they are the usual thing. The jury of six is the normal jury in such a case, a jury of twelve being unusual. Such juries are "pick-up" juries. Changes of venue are quite frequent.

The justice of the peace system can hardly be said to work satisfactorily. The fee system is the basis of compensation. The justice is rarely a lawyer. He is sometimes illiterate and totally ignorant of the law. Unscrupulous men often succeed in getting elected. The attorney for the plaintiff picks the justice. The defendant is necessarily placed in an unfavorable position at the outset. The saying is that the plaintiff always gets judgment. As a matter of fact, some justices rarely give any other judgment. Attorneys having a large collection practice frequently bring all their suits before the same justice. He is expected to give judgment for the plaintiff as a matter of course. Justices sometimes compete for certain types of business by entering into agreements to share or discount fees. Justices often act as collection agents themselves, using their position to obtain unfair advantage over the debtor. If necessary to sue, the justice in such cases often brings suit himself, acting as attorney and judge and deciding the case unless the defendant takes a change of venue. It is needless to say that the defendant's chances of winning in such a proceeding are slight. Unscrupulous justices and constables sometimes join hands in fleecing innocent victims and dividing the loot between them. Practices of this character are bound to occur so long as the fee system is the basis of compensation.

The jurisdiction of the justice of the peace extends throughout the county. A plaintiff may bring suit before any justice in the county. The old familiar practice of suing a defendant in that part of the county most inaccessible to him is still resorted to. When this is done, the case is often set for trial at an early morning hour; if the defendant takes the trouble to be present, the plaintiff invariably secures a continuance.

The justice of the peace system seems to work better in the administration of petty criminal business. There seems also to be little complaint of the justice of the peace as a committing magistrate, although

even here difficulties sometimes result from his ignorance of the law. In many justices' courts preliminary examinations take place without the presence of the state's attorney or his representative. The more careful justices notify the state's attorney's office in such cases and give him an opportunity to be present.

Appeals from the justices' courts are quite common. If the amount involved is insignificant a defeated plaintiff will be disposed to let the matter drop. In such a case a defeated defendant will, however, often take an appeal either to delay payment or to make it unprofitable for his opponent to pursue the matter further. If any considerable sum is at stake, neither a defeated plaintiff nor a defeated defendant is likely to be satisfied with the decision of a justice of the peace. Railway and corporation attorneys do not ordinarily contest suits brought against their clients in justices' courts. They content themselves with watching the progress of the case, following an adverse judgment with an appeal to the circuit, county or city court where the issue is really fought out. If any substantial sum is involved, a suit in a justice of the peace court is, as a practical matter, a mere superfluity, entailing needless expense and labor.

The preceding discussion is intended as a criticism, not of the justice of the peace, but of the justice of the peace system. There are many honest and capable justices of the peace and police magistrates. But the system is fundamentally vicious. The number of justices is far in excess of the number required to transact the business to be done. The fee system is the basis of compensation. Under this system it is impossible for a fair justice in a small community to make any substantial sum out of his office. The great difficulty with such a system of compensation is, of course, the temptation which it offers to justices to increase their receipts by unscrupulous methods.

The evils of the justice of the peace system are, of course, much more keenly felt in urban communities than in rural communities.

The justice of the peace situation in Cook County outside of the city of Chicago presents substantially the same problems as those already pointed out. This phase of the subject is, however, given more detailed treatment in the discussion of the judicial situation in Cook County.

County and probate courts. Each county in the state has a county court. This court has exclusive original jurisdiction in all probate matters, in all counties except those in which probate courts have been established.²⁶ In addition, it has, under the constitution, jurisdiction in tax matters. By statute it is given exclusive jurisdiction in the county in insane cases, insolvent debtors proceedings, and assignments for the benefit of creditors. It has concurrent jurisdiction with the circuit court in appeals from justices of the peace, in eminent domain cases, contests of election for certain offices, drainage matters, and other statutory proceedings. The county court has concurrent jurisdiction with the circuit court in that class of cases in which justices of the peace have jurisdiction where the amount involved

²⁶ Probate courts have been established in the following counties: Cook, Kane, La Salle, Madison, Peoria, Rock Island, Sangamon, St. Clair, Vermillion and Will.

does not exceed \$1,000. It also has concurrent jurisdiction with the circuit court in non-indictable offenses where the punishment is not imprisonment in the penitentiary or death. As already explained, the phrase "non-indictable offenses" is used in this discussion to designate offenses which may under the constitution be prosecuted without indictment, although as a matter such offenses are tried in the circuit court only on indictment.

In the cities of Chicago, East St. Louis, Springfield, Galesburg, Danville, Cairo, Rockford, Bloomington, Freeport and Peoria, which have adopted the city election commissioner's act, the county judge appoints election commissioners and has general supervision over the election machinery.

In counties in which probate courts have not been established the work of the county court consists mostly of probate matters. The law jurisdiction of the county court in cases where it has concurrent jurisdiction with the circuit court has been but little developed in most counties. In many counties large numbers of misdemeanors are certified to the county court by the circuit court. The state's attorney may also proceed against misdemeanants in the county court by information. In consequence, the non-probate work of the rural county court is confined largely to misdemeanors and to the comparatively few classes of cases in which the county court is given exclusive original jurisdiction.

The failure of attorneys to use the county court in cases where it has concurrent jurisdiction with the circuit court has been due largely to the fact that county judges are frequently less able lawyers than circuit judges. In fact, until recently many county judges were not lawyers. The office carries a small salary and, for that reason, is not particularly attractive to the more experienced members of the bar. The salaries of county judges, which are fixed in each county by the county board, range from \$3,500 a year in Sangamon and Will counties to \$300 a year in Hardin county. One-half of the county judges do not receive over \$1,500 a year.²⁸ Furthermore, lawyers are in the habit of filing their suits in the circuit court. Most of their trial work is in that court, and it is easier to handle all of their cases in one court than to divide them between two courts. Little, if anything, is to be gained from the standpoint of time by bringing a jury case in the county court. In the first place, the county court may have fewer law terms than the circuit court. Again, so few jury cases are filed in some county courts that the judge may deem it advisable to let them accumulate before calling a jury. In a few instances, owing largely to the personality of the judge, the county court has developed a fair amount of civil business.

The county court situation was analyzed in several down-state counties which do not have probate courts. Three of these were mining counties with populations of approximately 60,000, 55,000 and 40,000. Three were agricultural counties of about 23,000, 22,000 and 15,000. In each county studied, the bulk of the work of the court consists of probate matters. Such matters arise almost daily and the court is continuously open in the sense that the judge must be prepared to

²⁸ For table giving salaries of county judges see appendix, page 892.

handle them as they come up. The law work of these courts is not heavy. The number of civil cases is small. Only one of the county courts studied had developed any appreciable amount of civil business. There is more criminal work, misdemeanors being certified to the county court by the circuit court. This work has, however, fallen off since prohibition went into effect. In one of these courts it was formerly not uncommon to have 100 misdemeanors on the calendar of a law term. At the last law term there were not over ten criminal cases. The number of law terms in the different counties is regulated by statute.²⁹ In the county of 60,000 the court holds three law terms a year, each term lasting about a week. In the county of 33,000, the court holds four law terms of about two weeks each. In the agricultural county of about 23,000 the law work does not total two weeks a year. In the county of 22,000, it does not ordinarily occupy the judge over a week. In fact, this court had no cases on its law calendar at its last term.

In the largest mining county, the duties of the judge take up over one-half of his time. In the other two mining counties, he is busy from one-third to one-half of the time. In the agricultural counties, his official duties take up but a small portion of his time. Many county judges are able to devote the greater part of their time to private practice.

In nine down state counties there is a probate court in addition to the county court.³⁰ These courts are established in all counties having a population of 70,000 or more.³¹ The effect of the establishment of a probate court is to remove the following matters from the jurisdiction of the county court and place them in the hands of a separate court: Probate matters, the settlement of estates of deceased persons, the appointment of guardians and conservators and the settlement of their accounts, all matters relating to apprentices, and cases of the sales of real estate of deceased persons for the payment of debts.³² The salary of the probate judge is fixed by the county board. These salaries range from \$2,200 in Madison county to \$3,500 in Sangamon, La Salle and Will counties. A statement showing the salaries of the various probate judges is printed in the appendix on page

Information was obtained as to the amount of business in the county and probate courts in four of the nine counties in which separate probate courts have been established. In one of them both the county and probate judges have a large amount of spare time. One judge could handle the work of both courts, and still have much time available for private practice. In another county both judges are in a position to devote much time to outside work. The third county presents the same situation. One judge could handle the work of the two courts in both of these counties. In the fourth county both judges are kept fairly busy. It is doubtful whether in this county one judge could handle the work of the two courts.

²⁹ Hurd's Revised Statutes, Chap. 37, Sec. 96-198.

³⁰ These counties are: Kane, La Salle, Madison, Peoria, Rock Island, Sangamon, St. Clair, Vermilion, and Will.

³¹ Hurd's Revised Statutes, Chap. 37, Sec. 216.

³² Hurd's Revised Statutes, Chap. 37, Sec. 220.

Appeals from the final orders, judgments and decrees of the probate court (and of the county court in probate matters) are taken to the circuit court of the county in all cases except in proceedings of executors, administrators, guardians and conservators for the sale of real estate. In such proceedings appeals are taken to the appellate or supreme court. In appeals to the circuit court there is a trial de novo. The number of trials de novo in down-state counties is not great. In one of the larger counties there were only five appeals from the probate court to the circuit court in 1918.

The situation with respect to testamentary trusts has already been discussed.³³ The supreme court has held that, under the present constitution, probate courts may not, by statute, be given jurisdiction over testamentary trusts. The result is that such trusts must be administered by the circuit court. Testamentary trusts are comparatively rare in many down state counties. In several instances they have been handled in probate courts, the interested parties making no objection to such procedure.

City Courts. The city court situation in Illinois has been touched upon briefly in the discussion of the court geography of Illinois.³⁴ There are twenty-seven of these courts in the state. Five of them are located in county seats. Under the present statute a city court may be organized in any city having a population of at least 3,000, when the common council or city council shall adopt an ordinance or resolution to submit the question whether such a court shall be established to the qualified voters of the city, and two-thirds of the voters at such election shall be in favor of the establishment of the court.³⁵ If the city has a population of less than 5,000 the salary of the city judge is paid out of the city treasurer; if more than 5,000, it is paid from the state treasury. The salaries of all the city judges, with the exception of that of the city judge at Zion City, are now paid from the state treasury. In 1919 \$55,500 will be paid from the state treasury for the salaries of city court judges.

A table showing the names of the various city courts, the dates of their organization, and the salaries of the judges is printed in the appendix on page 893.

During the time available for gathering material for this bulletin it has been impossible to make a study of each of the twenty-seven city courts. Data has, however, been obtained as to fourteen. Of this number only four can fairly be said to handle a sufficient amount of business to justify the expense of their maintenance. Of the ten remaining courts, four are practically unused. Of these four, three are at county seats. The other six courts do a very small amount of work.

Of the eight city courts in the mining region in the southern part of the state only one, that at Duquoin, has been a success. That court, situated in the city which contains practically all the lawyers of Perry county and presided over by an able judge, handles approxi-

³³ See page 752.

³⁴ See page 756.

³⁵ Hurd's Revised Statutes, Chap. 37, Sec. 260.

ately one-half of the judicial business of the county. The remaining seven courts are either unused or are used only to a slight extent.

Of the fourteen courts studied, several do not exercise any criminal jurisdiction whatever. In some of them there is an occasional prosecution of some person who has committed a crime within the city. Most offenders who commit crimes in these cities are prosecuted in the circuit court. In only one or two instances has a city court developed any appreciable criminal jurisdiction.

These city courts as such have, in most instances, failed to relieve the circuit court of any considerable amount of work. City judges have, however, frequently held circuit court under the provisions of the statute permitting the interchange of circuit and city judges.³⁶

The extent to which city judges have held courts in Chicago is indicated in the table on p. 894 of the appendix. Several city judges devote practically all of their time to private practice.

City courts draw their jurors from the entire county. Many city judges have, however, adopted the policy of excusing jurors who reside in the more remote parts of the county.

Many reasons have been assigned for the non-employment of these city courts. Their jurisdiction is confined to narrow limits. Their process does not run beyond the city limits. Their criminal jurisdiction extends only to crimes committed within the city. Many questions have arisen as to the extent of their jurisdiction. The city judges have not as a general rule been as able lawyers as circuit judges, and attorneys have been reluctant to bring cases in their courts. In a few cases in which the city courts have developed any substantial amount of business, the personality of the judge has been a controlling factor. Prompter jury trials are ordinarily not secured in a city court since such a small number of jury cases are filed in these courts that considerable time may elapse before the judge feels himself warranted in calling a jury.

These courts have been established for various reasons. Before the workmen's compensation act was made compulsory, the circuit courts were badly congested in many counties and attorneys felt that the establishment of a city court would enable them to get prompter trials. In the case of cities which were not county seats, there was also the desire to save attorneys and litigants the inconvenience and expense of going to the county seat to try their cases. Political considerations have also played an important part. Attorneys desirous of being elected city judge have launched some of the movements for the establishment of city courts.

The city court at Chicago Heights will be taken up in the discussion of the judicial situation in Chicago and Cook County.

Circuit courts. The circuit court is the important trial court. By the constitution it is given "original jurisdiction of all causes in law and equity and such appellate jurisdiction as is or may be provided by law".³⁷ It has been given additional jurisdiction in numerous

³⁶ Hurd's Revised Statutes, Chap. 37, Sec. 245.

³⁷ Constitution, Art. VI., Sec. 12.

statutory proceedings. Any case, civil or criminal, which may be brought before a justice of the peace, or in a city court, may also be brought in the circuit court. It has concurrent jurisdiction with the county court in that class of cases in which justices of the peace have jurisdiction where the amount involved is not greater than 1,000. Many statutory proceedings which may be brought in the county court may also be brought in the circuit court. The circuit court has no original jurisdiction in probate matters.

Exclusive of Cook County, the state is divided into seventeen judicial circuits. The geography of these circuits has already been discussed on page 756. Three judges are elected in each circuit for a term of six years. From the judges thus elected and from the twenty circuit and twenty superior court judges in Cook County, the supreme court assigns judges to the appellate court. Eighteen judges are now performing appellate court duties, nine being assigned to the first appellate court district and three to each of the other appellate districts. The nine judges in the first district have been taken from the circuit and superior courts of Cook County. The judges assigned to the second, third and fourth appellate districts have been taken from down state circuits, and hold circuit court between sessions of the appellate court.

The constitution requires two or more terms of circuit court to be held each year in each county.³⁸ By statute detailed provisions is made concerning the time of holding the terms of circuit court and of the calling of juries in the several down state judicial circuits.³⁹ The circuit judges hold court in such counties as they may agree upon, or in case of disagreement, in such counties as the chief justice of the supreme court may assign to them.⁴⁰ Circuit judges of a circuit may upon request to the supreme court have other judges assigned to assist them.⁴¹ They may exchange with city judges and interchange with each other.⁴²

Before the workmen's compensation act became compulsory, the circuit courts in many of the industrial and mining counties were badly congested. The industrial commission has relieved these courts of much of this congestion.

In the short time available for the preparation of this bulletin it has been possible to make a study of only eight of the seventeen circuits. The circuits examined are located in different parts of the state and contain agricultural, mining, and industrial counties. There is a considerable variation in the amount of judicial work in these eight circuits. In three of them the amount of work bears just about the proper relation to the number of judges. Each of these three circuits has plenty of work to keep all three judges busy within the circuit. One of these circuits is represented on the appellate bench, but the condition of business in this circuit is such that a judge cannot well be spared for this work.

³⁸ Constitution, Art. VI., Sec. 12.

³⁹ Hurd's Revised Statutes, Chap. 37, Sec. 78 et. seq.

⁴⁰ Jones and Addington's Illinois Statutes Annotated, Ch. 37, Sec. 3067.

⁴¹ Hurd's Revised Statutes, Chap. 37, Sec. 82i.

⁴² Hurd's Revised Statutes, Chap. 37, Secs. 57, 245.

Three other circuits were found to have a smaller amount of business. Conservatively estimated, each of these circuits has enough work to occupy the full time of two judges and part of the time of the third. The third judge has a large portion of time available for appellate court work.

In the seventh circuit studied the work is badly behind. One of the judges of this circuit is sitting on the appellate bench. Another has been in ill health and is unable to give full time to his work. The third judge is unable to keep the work of the circuit up to date. In one of the counties in this circuit the work of the court is some six hundred cases behind.

In the last circuit studied a single judge is doing the greater part of the work.

An examination was also made of the status of judicial business in the courts of several of the counties in the circuits studied. Three of these counties are mining counties in the two busiest circuits discussed. In each of these courts there are three or four terms a year, each term lasting several weeks. Each court is held by a resident judge, who does not adjourn court between terms. The court is kept open practically all of the time. The judge, while holding court in other counties, returns at frequent intervals to hear motions, handle chancery matters, or perhaps hear a jury case. Each of these courts has a large number of cases on its calendar. In fact it might take from six months to a year to dispose of all the cases now on the calendar of the circuit courts in two of these counties. Litigants are not, however, subjected to serious delays. Any attorney desiring a prompt trial may ordinarily get his case advanced on the calendar.

The amount of business in three agricultural counties ranging in population from 15,000 to 25,000 was also examined. In one of these counties the circuit court holds three terms, aggregating ten or twelve weeks a year. The other two have two terms each, each term lasting about two weeks.

The circuit court of Sangamon county in the seventh circuit is abnormal to the extent that all appeals from the orders of the public utilities commission are taken to it. This adds a considerable burden to the business of the court, but not enough to congest its work.

From the preceding discussion it would appear that the judicial business of the state is not evenly distributed. Some of the circuits cannot well spare judges for appellate court work. In others judges can be assigned to the appellate bench without in any manner interfering with the work of the circuit. Many down-state circuit judges have held court in the circuit and superior courts of Cook County. The extent to which this has been done is set forth in the tables on p. 894 of the appendix. Dissatisfaction has been expressed in certain down-state communities because of the large amount of time spent by their judges in Chicago courts.

A word should be said with respect to masters in chancery. The extent to which masters are used in the different circuit courts varies. In two of the circuits studied it is the practice of the judges to refer little to masters. Only when the case involves a complicated account-

ing is a reference made. In other circuits it is the policy to refer practically all matters to a master in chancery. Masters receive fees as compensation, and the amounts earned by them vary according to the amount of business in the circuit, and the policy of the court in referring matters to them. In several counties the masters in chancery are not lawyers.

Summary of the down-state judicial organization. It may be of interest to make a brief summary of the judicial organization in the different types of counties, based on a study of eight of the seventeen judicial circuits.

In counties of the first type we find the justice of the peace courts, the county court and the circuit court. We find the justice's courts handling petty matters, appeals being taken in cases involving substantial sums. Such appeals are ordinarily taken to the circuit court. Sometimes appeals are taken from justice's courts for the purpose of delay. In such case the appeal will be taken to the court which will best serve that purpose. The work of the county court in this type of county consists mostly of probate matters. The court is kept open continuously for business of this character. The civil common law jurisdiction of the county court is little used. In a few county courts, owing largely to the personality of the judge, a considerable amount of civil business is handled. The law business of the county court is mostly criminal. Misdemeanors may be certified to it by the circuit court. The state's attorney may also proceed against misdemeanants in the county court by information.

The circuit court is the important trial court. It handles all equity work, most civil common law cases, and the more important criminal cases. Appeals from the county court in probate matters go to the circuit court in practically all cases. In the circuit court a trial *de novo* is had. As a practical matter, such trials *de novo* are not numerous in most down state counties.

The amount of time required for the transaction of judicial business in many of the counties of this type is not large. In several of them the business of the circuit court, if transacted continuously, could be disposed of in from four to six weeks. Similarly, the non-probate work of some of the county courts in this type of county does not consume over two weeks of the time of the judge. Probate matters come before the court day by day, but in many counties the total amount of such business, if transacted continuously by the judge, would not keep him busy over two or three days a month. It is safe to say that the total business of the county and circuit courts in some of these counties would not take over one-third of the time of one judge.

In the second type of down-state county we have one or more city courts in addition to the justice of the peace courts, the county court, and the circuit court. The city courts are in many cities practically unused. In only a few cities are they employed to any ap-

preciable extent. Therefore, in most counties of this type the city court, as such, is not an important factor in the judicial situation. As in the first type of county, the work of the county court is confined chiefly to probate matters. As a general proposition, this court has not developed any jurisdiction in that class of cases in which it has concurrent jurisdiction with the circuit court. The city court judges sometimes assist the circuit judge by holding circuit court under the provisions of the statute permitting city judges to interchange with circuit judges.

In some of the counties of this type one judge might possibly handle the work of the county, circuit and city courts. Most of them would probably require more than one judge to do the work of the three courts.

In the third type of county we find a probate court in addition to the justice's courts, the county court, the circuit court, and one or more city courts. The division of work in this type of county differs from that in the preceding type in that the probate work is here taken from the county court and placed in the hands of a separate court. In several of the counties of this type one judge could undoubtedly handle the work of both the county and probate courts.

The fourth type of county is like the third, except that it contains no city court. In other words, it has the justice of the peace courts, the county court, the probate court, and the circuit court. The situation in this type of county is much like that in the preceding type.

Each court in the judicial organization is an independent administrative unit. The judges are independent of each other and are responsible to no other officer for the manner in which they conduct their courts or for the amount of work they do. To be sure, the constitution requires that the circuit judges report to the general assembly the number of days they hold court in the counties composing their circuits. This is, however, done by only a few judges. The constitution also requires all judges of courts of record, inferior to the supreme court to report annually in writing to the supreme court defects and omissions in the laws.⁴³ This requirement is not practically obsolete.

The few tendencies in Illinois toward unification in the courts may be briefly mentioned:

(1) In cases of disagreement among the judges of the circuit court as to the counties in which they shall hold court, the chief justice of the supreme court shall make assignments.⁴⁴ The chief justice has rarely been called upon to exercise this function.

(2) The supreme court or any judge thereof when so requested may assign judges of the circuit court to assist in other circuits or to the superior court of Cook County. Such requests are sometimes made of the supreme court in cases of emergency. The circuit and superior courts of Cook county, however, usually deal directly with down-state

⁴³ Constitution of 1870, Chap. 6, Sec. 31.

⁴⁴ Jones and Addington's Illinois Statutes Annotated, Ch. 37, Sec. 3067.

judges whose services are desired without making a request of the supreme court.

(3) Various statutes permit the interchange of judges. County and probate judges may interchange with each other. City judges may interchange with each other. They may also hold court for circuit, superior or probate judges.

The extent to which down-state judges have held court in Chicago is indicated on page 894 of the appendix. As already stated, complaint has been made in certain down-state communities because of the large amount of time spent by their judges in Chicago courts.

The judicial situation in Chicago and Cook County. The judicial situation in Chicago and Cook County raises problems somewhat different in character from those of the down-state counties. For this reason it is deemed advisable to treat this subject separately.

Before discussing the practical working of the various parts of the judicial system in Cook County, it may prove of interest to consider briefly the jurisdictional relationships of the various trial courts open to litigants, and in a general way possible choices of courts open to litigants as a result of overlappings of jurisdiction. For this purpose it will be convenient to consider first the situation in Cook county outside of the city of Chicago, and second the situation within the city of Chicago.

Cook county constitutes a judicial circuit and an appellate court district. In addition to the circuit court, the county court and the probate court, Cook county has the criminal court of Cook county and the superior court of Cook county. In Chicago there is also the municipal court of Chicago. In Chicago Heights there is the city court of Chicago Heights. Outside of Chicago there are justices of the peace and police magistrates. Since the establishment of the municipal court of Chicago in 1905, there have been no justices of the peace or police magistrates in the city of Chicago.

The circuit court of Cook County and the superior court of Cook County are courts of concurrent jurisdiction. The criminal court of Cook county has "the jurisdiction of a circuit court in all cases of criminal and quasi-criminal nature arising in the county of Cook".⁴⁵ The municipal court of Chicago has concurrent jurisdiction with the circuit and superior courts of Cook county within the city of Chicago in all contract cases, and in tort cases where the amount involved does not exceed \$1,000, and concurrent jurisdiction within the city with the criminal court of Cook county in non-indictable offenses. The county court has concurrent jurisdiction with the municipal court of Chicago, the circuit court of Cook county and the superior court of Cook county in certain cases. Neither the municipal court of Chicago nor the county court has any equity jurisdiction.

The following courts are available to the litigant outside of the city of Chicago: the courts of the justices of the peace and police mag-

⁴⁵ Constitution of 1870, Art. VI., Sec. 26.

istrates, the county court, the probate court, the circuit court, and the superior court of Cook county. If the litigation is such that the city court of Chicago Heights has jurisdiction, that court is also open as a possible choice. An Evanston litigant having a contract claim involving \$300 or less or any other kind of claim for a similar amount justiciable in a court of a justice of the peace may, under this system of courts, sue an Evanston defendant before any justice of the peace or police magistrate in the county or bring his action in the county court, the circuit court, or the superior court of Cook county. Substitute a Chicago Heights plaintiff and a Chicago Heights defendant for the Evanston plaintiff and Evanston defendant, and you must add to the above mentioned courts the city court of Chicago Heights. If the amount of the claim of the Evanston plaintiff is greater than \$300, the justice of the peace loses jurisdiction. In that case the plaintiff may still sue in the county court, the circuit court or the superior court of Cook county, provided his claim is not greater than \$1,000. Substitute again Chicago Heights litigants for Evanston litigants and you must again add the city court of Chicago Heights. If the claim is in excess of \$1,000, the county court cannot be employed, but the Evanston litigant may still sue either in the circuit court or in the superior court of Cook county. The Chicago Heights litigant in the same type of case could also sue the Chicago Heights defendant in the city court of Chicago Heights. If a chancery case, the Evanston litigant could file his bill either in the circuit court or the superior court of Cook county. The Chicago Heights litigant might in addition proceed in the city court of Chicago Heights. Appeals from justices of the peace in Evanston may be taken to the county court or the circuit court, or apparently to the superior court of Cook county. Appeals from justices of the peace in Chicago Heights may be taken to the city court of Chicago Heights, the county court, the circuit court or to the superior court of Cook county. The probate court alone has original jurisdiction in probate matters arising in the county. Appeals from the probate court in such matters must ordinarily be taken to the circuit court where a trial de novo is had.

Let us now examine the situation with respect to litigation arising in the city of Chicago. If a Chicago plaintiff wishes to sue a Chicago defendant in a contract claim involving \$1,000 or less, he may proceed either in the municipal court of Chicago, the county court, the circuit court or the superior court of Cook county. If the amount involved is greater than \$1,000, the county court loses jurisdiction. He may, however, still sue in the municipal court of Chicago, the circuit court or the superior court of Cook county. If a tort case of a character which might be brought before a justice of the peace outside of the city of Chicago, the plaintiff may proceed in the municipal court of Chicago, the county court, the circuit court, or the superior court of Cook county, providing the amount of the claim does not exceed \$1,000. If the sum demanded is in excess of \$1,000, the plaintiff still has a choice between the circuit court and the superior court of Cook county. In chancery matters, plaintiff may proceed either in the circuit court or the superior court of Cook county.

Non-indictable offenses committed in the city of Chicago may be prosecuted in the municipal court of Chicago or the criminal court of Cook county. In indictable offenses the jurisdiction of the municipal court is confined to that of a committing magistrate. Trial of the accused must take place in the criminal court of Cook county.

Misdemeanors committed within Cook county, but outside of the city of Chicago, are prosecuted in the criminal court of Cook county. If within the jurisdiction of a justice of the peace, they may also be prosecuted before any justice of the peace or police magistrate. In cases prosecuted only on indictment justices of the peace or police magistrates may act only in the capacity of committing magistrates; indictment and trial is before the criminal court of Cook county.

In this connection, it should be noted that the county court, the circuit court, the superior court of Cook county, and the city court of Chicago Heights exercise no criminal jurisdiction.

The justice of the peace system in Cook County outside of Chicago. There are 168 justices of the peace and police magistrates in Cook County outside the city of Chicago. As in down state communities, the number of justices is far in excess of the number required to transact the business of the community.

The evils of the justice of the peace system are perhaps more keenly felt in Cook County outside of the city of Chicago than in any other part of the state. This is particularly true in the southern part of the county where the situation is possibly worse than it was in Chicago before the abolition of the justice of the peace system within the city limits. This is intended as a criticism of the system rather than of the individual justices. Many of the justices in Cook county are high grade men.

Before the abolition of the justice of the peace system in the city of Chicago it was a common practice to sue a litigant in that part of the county most inaccessible to him, and to have the case set for trial at an early morning hour. If the defendant managed to be present the plaintiff invariably obtained a continuance. While this particular type of abuse is not now common in Cook county, it sometimes occurs. The mere fact that the justice of the peace has jurisdiction throughout the county is bound to lead to inconvenience in numerous cases even when the plaintiff has no intention of embarrassing the defendant. If a plaintiff in Harvey wishes to sue a defendant in Glencoe, he will naturally accommodate himself and bring the suit before a justice of the peace in Harvey rather than before a justice of the peace in Glencoe. Such a procedure of necessity requires the defendant to come to Harvey if he wishes to contest the case.

Justices of the peace and police magistrates act as committing magistrates on preliminary examinations. In handling this type of business the more careful justices notify the state's attorney's office in order that he may have a representative present. Many justices proceed without giving him such notice. In criminal prosecutions before justices of the peace and police magistrates, the charge is sometimes changed in order to permit the justice to dispose of the case

and thereby render it unnecessary to hold the offender over to the grand jury.

The most vigorous complaints against the justice of the peace system come from the southern part of the county. In that part of the county unscrupulous men have sometimes succeeded in getting elected to the office of justice of the peace and police magistrate. Abuses are quite common. Alliances between justices, constables and police officers to fleece the foreign population of that part of the county have not been infrequent. The garnishment process has been greatly abused. Members of the bar have called attention to the unfortunate impression which such practices create in the minds of the immigrant as to the nature of American justice.

Appeals from justices of the peace may be taken to the county court, the circuit court, or the superior court of Cook county. Most of these appeals go to the circuit court. Formerly the circuit court made no special provision for handling such cases, but mixed them with personal injury and other law cases. Appeals from justices, together with appeals from the probate court, are now placed on a separate calendar and assigned to a single judge.

The city court of Chicago Heights. The city court of Chicago Heights exercises jurisdiction in law and equity cases. Some question having arisen as to the criminal jurisdiction of this court, that jurisdiction has not been exercised. This has led to a somewhat unfortunate result. Chicago Heights is twenty-seven miles from Chicago. The state's attorney has no representatives there. The result is that all criminal cases, except such as may be prosecuted before a justice of the peace or police magistrate, are handled by the criminal court of Cook county. This has led to a somewhat lax administration of the criminal law in that part of the county.

The city court at Chicago Heights draws its jurors from the entire county. It is, however, the policy of the judge not to call men who live in the more remote parts of the county.

The court is a great convenience to the people of Chicago Heights, in that it enables litigants to get a prompt adjudication of their cases without subjecting them to the delays of the courts in Chicago.

Municipal court of Chicago. The events leading to the organization of the municipal court in Chicago have already been discussed.⁴⁶ To establish this court it was necessary to amend the constitution of the state. This was done in 1904, when the general assembly was given power to provide a local municipal government for the city of Chicago, and in the event that municipal courts were created, to prescribe the jurisdiction and practice of these courts, to abolish justices of the peace in Chicago, and to limit the jurisdiction of justices of the peace in Cook county outside of Chicago to that territory. In 1905 the municipal court of Chicago was created by the general assembly, and the justices of the peace system abolished within the limits of the city of Chicago.

⁴⁶ See pages 737-8.

The municipal court of Chicago was one of the first unified courts to be established in the United States. It consists of a chief justice and thirty associate judges. The chief justice is the general superintendent of the court. He presides over all meetings of the judges, and assigns the associate judges to duty in the branch courts. It is made the duty of each associate judge to attend and serve at the branch court to which he is assigned. The chief justice classifies the cases filed in the court and superintends the preparation of calendars. Each associate judge is required to make a monthly report to the chief justice of the duties he has performed during the preceding month. This report must specify the number of days he has held court and the number of hours per day. The judges of the court are required to meet each month to receive and investigate complaints and to make rules for the court.

The power of the chief justice to classify and distribute cases brought in the court and to assign judges to different calendars is significant. It enables the chief justice to have all cases of a like character returned to the same branch. The power to assign a judge to any branch enables him to select the judges best qualified by experience and temperament to preside over the specialized branches.

This makes for uniformity in the treatment of similar cases and for specialization among the judges. It enables the chief justice to assign the poorer judges to classes of cases of lesser importance where they can do the least harm. It also enables him to keep the judges in all branches busy, since he can transfer cases from one judge whose calendar may be congested to another who may have little to do.

The municipal court act prescribes a simplified procedure, and gives the court wide powers to make rules not inconsistent with the act.⁴⁷

The court has been given a large degree of supervision over the clerk and bailiff by the provision that the chief justice shall superintend the keeping of the records and that the number of deputies shall be determined by the court.

For the purposes of this court the city of Chicago is divided into two districts. The first district comprises practically all of that part of the city north of Seventy-first street and west of Cottage Grove Avenue, and the second district the remainder of the city. All civil branches in the first district are located in the city hall. Some of the criminal branches in this district are located in the city hall and some in other parts of the city. In the second district one branch court disposes of both civil and criminal cases. A statement showing the system of distribution of work among the judges of the municipal court early in December, 1919, follows:

First class cases and motions.....	1 judge
Small claims.....	3 judges
Citations in quasi criminal cases.....	1 judge
Forcible detainer and distress for rent.....	1 judge
Automobile branch.....	1 judge

⁴⁷ Hurd's Revised Statutes, Chap. 37, Sec. 283.

Domestic relation branch.....	1 judge
Attachment, garnishment, replevin, detinue.	1 judge
Morals court.....	1 judge
Boys court.....	1 judge
Non-jury cases.....	2 judges
Jury cases.....	10 judges
Criminal cases.....	6 judges
Jury and vagrancy.....	1 judge
Total.....	30 judges ^{47a}

The municipal court of Chicago has unlimited jurisdiction of actions upon contracts and actions for conversion of or injury to personal property. It also has general jurisdiction in all classes of common law cases where the plaintiff does not claim over \$1,000. It has jurisdiction of non-indictable offenses where the punishment is not imprisonment in the penitentiary or death.

With the exception of jury cases, the business of the municipal court is kept well in hand. It now takes from twelve to eighteen months before a civil case is reached on the jury calendar. Criminal work is handled far more expeditiously. If the accused does not demand a jury trial the case is frequently disposed of in twenty-four hours. If placed on an emergency calendar they are reached within a shorter time.

In the municipal court the parties do not get a jury trial in civil cases as a matter of course, as in the other courts of record. In order to have a jury in such cases, it is necessary to make a demand and pay a fee of six dollars. While this has caused the number of jury trials to be greatly decreased, the decrease has not been sufficient to enable the court to keep abreast of its jury cases. Demands for jury trials are frequently made by litigants for the sole purpose of delaying the trial of the case.

The judges of the municipal court may interchange with city judges and with county judges.⁴⁸ A table showing the names of down state judges who have served in this court during the past four years, with the number of days of service per year, is printed in the appendix on page 894. Notwithstanding the use of down state judges, the court has been unable to catch up on jury trials.

The municipal court act makes it the duty of the chief justice to examine all jurors.⁴⁹ Enough jurors are selected to provide each jury branch with twelve jurors and enough more to meet contingencies are kept in reserve in the waiting room. When a jury retires another is made up from the reserve and the judge may proceed at once with his next call. The jurors, when they have returned their verdict in one cause, are free to be assigned to any other trial branch.

The criminal jurisdiction of the municipal court is limited to criminal cases in which the punishment is by fine or imprisonment

^{47a} There is now (December, 1919) one vacancy in the municipal court of Chicago.

⁴⁸ Hurd's Revised Statutes, Chap. 37, Sec. 276.

⁴⁹ Hurd's Revised Statutes, Chap. 37, Sec. 289.

otherwise than in the penitentiary and all other criminal cases which the laws in force from time to time may permit to be prosecuted otherwise than by indictment of a grand jury. In cases involving indictable offenses the municipal court acts in the capacity of a committing magistrate, holding offenders over to the grand jury.

Until the municipal court was established judicial statistics were almost unavailable in the United States. The organization of this court has enabled the chief justice to gather much statistical material, and reports of the court containing detailed statistics have been published regularly.

The greater part of the business of the court is commercial. Its business is constantly increasing. Personal injury suits may not be brought in the municipal court if the amount involved is over \$1,000. Its criminal jurisdiction, as already indicated, is somewhat limited. It has been urged that the court is required to hold over to the grand jury cases which it might much more easily and speedily dispose of itself. Complaint has, on the other hand, been made that the municipal court too frequently holds offenders over to the grand jury in cases which it could more appropriately handle itself by changing the charge to one within its jurisdiction.

County court of Cook County. The county court of Cook County has substantially the same jurisdiction as that of the down state county court in counties where there is also a probate court. The administrative duties of the county judge are much greater in Cook County than in other counties. Chicago is one of the cities which has adopted the city election commissioner's act. The duties of the county judges in connection with the supervision of the election machinery of the counties consume about one-half of his time. In Cook County the county court is much used in that class of common law cases in which the county court has concurrent jurisdiction with the circuit and superior courts. These are that class of cases in which a justice of the peace has jurisdiction and in which the amount involved does not exceed one thousand dollars. The use of the county court for this class of cases has been due to the congestion in the other courts. Attorneys seeking prompt trials have turned to the county court for relief. This has resulted in congestion in the jury calendar in the county court itself at times. The county court has concurrent jurisdiction with the circuit court in appeals from justices of the peace and police magistrates outside of the city of Chicago Appeals from justices of the peace are, however, ordinarily taken to the circuit court.

The county court exercises no criminal jurisdiction. It has maintained the view that it has no jurisdiction in this class of cases. For that reason it will not take jurisdiction in appeals from justices of the peace and police magistrates outside of the city of Chicago in criminal matters.

An idea as to the character of business before the county court can be obtained from the following statement of the cases filed in this court in 1918:

Kind of cases	No. of cases.
Lunacy cases.....	3,265
Pauper and non-support cases.....	299
Common law cases and appeals from justices of the peace.....	507
Condemnation cases.....	24
Special assessment cases.....	863
Inheritance tax cases.....	769
Objection to taxes.....	161
Deaf, dumb, blind and feeble minded cases.....	133
Adoption cases.....	653
	6,674

In December, 1919, five judges were sitting in the county court. All of these judges, including the county judge himself, are from down-state counties. In addition the probate judge of Cook County hears lunacy cases in the county court every Thursday.

A table showing the names of down-state judges who have held county court in Chicago during the past four years, together with the number of days of court held by each per year, is printed in the appendix on page 894.

Probate court of Cook County. The probate court is one of the busiest courts in Chicago. The amount of detail work in this court is enormous. The business of the court is rapidly increasing. The probate judge is, of course, unable to give personal attention to all matters coming before the court. To handle the increasing amount of work the court has adopted the so-called system of assistant judges. The assistant judge is, legally speaking, a deputy clerk of the court. The statute gives the clerk of the court power to appoint deputy clerks.⁵⁰ Under this power the clerk of the probate court appoints deputy clerks who, through the action of the probate judge, serve as assistants to the judge, relieving him of a great mass of detail work and enabling him to devote his attention to the big problems coming before the court. The difficulty with the assistant judge system in the probate court is the entire lack of control of the probate judge over the appointment of clerks who act as his assistants. Their appointment is vested in the probate clerk, who is politically independent of the probate judge. The probate clerk is in a position to appoint as assistants men who are not in harmony with the probate judge. The probate judge can, of course, decline to permit men thus appointed to execute orders or otherwise act in his name. It is not difficult to see that such a system is fraught with dangerous possibilities.

In the case of *Frackelton v. Masters*, 249 Ill. 30 (1911) the supreme court held that the administration of testamentary trusts is not a probate matter, but a chancery matter, and that the general assembly can not extend the jurisdiction of probate courts to include the administration of

⁵⁰ Hurd's Revised Statutes, Chap. 37, Sec. 230.

such trusts. Testamentary trusts cannot, therefore, be administered by the probate court of Cook County or of any other county. Many lawyers feel that this result is unfortunate and that the probate court should have this power.

Except in the few cases where an appeal from the probate court may be taken directly to the appellate or supreme court, appeals from the probate court go to the circuit court where a trial *de novo* is had. In 1918 a large part of the judicial time of one of the judges of the circuit court of Cook County was consumed in hearing probate appeals.

The matter of testamentary trusts and trials *de novo* will receive further consideration.

Before leaving the probate court, attention may properly be called to the differences in procedure between the probate court and the other courts. In the probate court large sums of money are annually paid out under orders and decrees of the court. These sums are arrived at with little formality so far as pleadings and procedure are concerned. The contrast between the simplified pleading and procedure in the handling of probate matters involving large sums of money and the complex system of pleading and practice involved in the adjudication of contests in common law and equity cases is not without significance.

Circuit and superior courts of Cook County. The circuit court of Cook County and the superior court of Cook County have practically identical jurisdiction. They perform substantially the same functions. Each now has twenty judges. From the forty judges of the circuit and superior courts judges are assigned to the criminal court of Cook county. Circuit and superior court judges are also subject to service in the appellate court. In December, 1919, there are four circuit court judges and four superior court judges sitting in the criminal court and four circuit court judges and five superior court judges in the appellate court.

The constitution prescribes that the judge having the shortest unexpired term shall be chief justice of the court of which he is a judge. In November, 1919, both the chief justice of the circuit court and the chief justice of the superior court were sitting in the appellate court for the first district. Each court has an executive committee consisting of the chief justice and the heads of the law and chancery divisions. The heads of the law and chancery divisions are elected by the judges of the court. The executive committee has general supervision over the assignment of the work. The effectiveness of such a committee is dependent largely upon its personnel. Some committees have accomplished much. The difficulty is that under the present system each judge in the circuit court and each judge in the superior court is independent of every other judge and of the court. He can hold court whenever he pleases and can hear cases on such calendars as he sees fit. In other words, he can work whenever he pleases and can do the kind of work he wishes to do. The success of any administrative plan is largely dependent upon the voluntary co-operation of the judges.

The practical operation of the present administrative system in the two courts is well illustrated in the attempt to secure specialization of judges in these courts. Some years ago both courts adopted the policy of assigning judges as chancellors for the length of their terms. The purpose was to secure greater efficiency. This policy has been steadily adhered to in the superior court. In that court the two chancellors serve as such until the expiration of their terms. The circuit court followed the plan for a time but broke away from it a few years ago, owing to the refusal of certain judges to abide by the rule. The result is that in the circuit court judges sit as chancellors for one year only. This change of policy on the part of the circuit court, while beneficial so far as the individual judges are concerned, is unfortunate. Chancery matters are frequently complicated and involved, and often drag over a number of years. The waste of time expended by a new chancellor in familiarizing himself with the details of the cases handled by his predecessor the year before is quite apparent.

There is some attempt at specialization in the common law calendar of the circuit court. One of the judges of this court has been sitting on condemnation and tax cases for two years; another on mandamus cases for the same length of time. Separate calendars are also made of quo warranto cases, workmen's compensation cases, appeals from the probate court, and appeals from justices of the peace. Short cause cases and short cause appeal cases, applications for leave to sue as a poor person, petitions for writs of habeas corpus (except in criminal cases) and petitions for writs of certiorari are assigned to judges who hear all cases of that type during the court year. In the superior court there appears to be no attempt whatever at specialization on the common law side. Cases are assigned to judges in rotation in groups of five without reference to their subject matter.

The large increase in divorce cases has rendered it necessary to assign judges especially to this work. In the circuit court it was formerly the practice for one judge to hear nothing but divorce cases for a year. One judge heard 4,000 of these cases in the course of twelve months. This proved to be too nerve-wracking. For the judicial year beginning October, 1919, a new arrangement has been made whereby the four chancellors sit in succession each for eleven weeks on default divorce cases only. Non-default cases are mingled with regular chancery matters. In the superior court two judges were assigned exclusively to divorce cases at the beginning of the court year of 1919-1920. One judge has since been transferred to jury cases, the congestion in divorce matters having already been relieved.

Both the circuit court and the superior court of Cook county have been badly congested in the past. At times they have been from two to three years behind in their calendars. The large number of jury trials tends to congest the work of both courts. In the circuit and superior courts the litigants in a civil suit get a jury trial as a matter of course unless they specifically waive it. The number of waivers is not great. Down state judges have been used to help clean up the calendars. The superior court has not used out of town judges during 1919. The

chancery calendars of both courts are now in much better shape. Their jury calendars, though much improved, are still behind.

Masters in chancery may be dealt with briefly. Under the existing system each court appoints twenty masters in chancery, one master being nominated by each judge. Litigants select their own masters; the result has been the concentration of the business in the hands of a few masters. The master is compensated by fees. The amount of compensation depends upon the length of the record. Under such a system there is apt to be little tendency on the part of the master to restrict the amount of testimony taken.

A master in chancery can save the judge a lot of time. He takes testimony and practically decides the case which simply goes to the judge for review. With the fee system abolished, with a reduction in the number of masters, and with the master more intimately connected with the court, it is probable that the chancery judge could be saved a much larger part of his time.

By the constitution certain non-judicial duties are placed upon the judges of the circuit court. The number of employes of the county fee offices is determined by the judges of this court. The judges are also charged by statute with the appointment of probation officers and the board of south park commissioners. The duty of determining the number of employes in the county fee offices has proved quite a troublesome one at times, and has consumed a good deal of the time of the judges.

Appeals from the probate court go to the circuit court where a trial de novo is had. In 1918 a large part of the time of one judge in the circuit court was consumed in hearing such appeals. Appeals from justices of the peace outside the city of Chicago usually go to the circuit court.

The juvenile court is a branch of the circuit court. The circuit judges appoint one of their number to act as judge of this court. In Cook county this court handles the cases of dependent, neglected, and delinquent children.

The following statements show the character of work being performed by the various judges of the circuit and superior courts of Cook County on December 5, 1919 :

Circuit court.

Chancery cases.....	3 judges
Default divorce cases.....	1 judge
Common law calendars.....	7 judges
Juvenile court.....	1 judge
Assigned to criminal court of Cook County	4 judges
Assigned to appellate court for first district	4 judges
Total	20 judges

Superior court.

Chancery cases.....	2 judges
Default divorce cases.....	1 judge

Common law calendars.....	8 judges
Assigned to criminal court of Cook County	4 judges
Assigned to appellate court for first district	5 judges
Total	20 judges

The criminal court of Cook County. The constitution gives to the criminal court of Cook County the jurisdiction of a circuit court in all cases of a criminal and quasi-criminal nature arising in the county of Cook.⁵¹ The constitution also provides that the terms of this court shall be held by one or more of the judges of the circuit or superior courts of Cook county, as nearly as may be in alternation, as may be determined by the judges or provided by law.⁵² Judges are assigned to the criminal court from the circuit and superior courts. In December, 1919, there are four circuit court judges and four superior court judges in the criminal court. The assignment is for one year. Re-assignments are rare. One judge has, however, been sitting in the criminal court for a number of years. This policy of assigning judges to the criminal court from the circuit and superior courts for short periods tends to discourage specialization in criminal work.

Under the present criminal procedure the municipal court conducts preliminary examinations. Persons accused of the more serious crimes not within the jurisdiction of the municipal court are held over to the grand jury, which conducts an examination de novo, releasing the accused or turning him over to the criminal court for trial. There is little delay in the conduct of preliminary examinations and examinations by the grand jury. Trials in the criminal court are sometimes delayed. Jail cases are rarely delayed over two or three months. It frequently takes counsel that long to prepare his case. If prisoners are not tried at the term of court commencing within four months of the date of commitment they must be set at liberty. In bail cases the delays are often longer. Such delays are, however, frequently the result of continuances agreed upon by the state's attorney's office and counsel for the accused.

Under the existing law a jury trial may not be waived in criminal cases which can be prosecuted only by indictment, even though both the state and the accused are willing to waive. This rule results in requiring a person, whose case might otherwise be disposed of, to remain in jail or on bail until a jury trial can be had.

Summary of judicial situation in Chicago and Cook County.

To recapitulate, the following courts of record sit within the area of Cook County: the appellate court, the circuit court, the superior court of Cook county, the criminal court of Cook county, the county court, the probate court, the municipal court of Chicago, and the city court of Chicago Heights. The circuit court has twenty judges, the superior court of Cook county twenty judges, the municipal court thirty-one

⁵¹ Constitution of 1870, Art. VI, Sec. 26.

⁵² Constitution of 1870, Art. VI, Sec. 26.

judges, the county court one judge, the probate court one judge and the city court of Chicago Heights one judge, making a total of seventy-four elected judges in the county. Judges are assigned to the appellate court and the criminal court of Cook county from the circuit court and superior court of Cook county. In addition to the seventy-four judges elected in Cook county, down state judges are constantly holding court in Chicago.

Of the eight courts of record in Cook county two, the circuit court and the superior court of Cook county, have almost identical jurisdiction. The jurisdiction of the circuit court, the superior court of Cook county, the county court, and the municipal court of Chicago overlap in several classes of cases. Similarly the jurisdictions of the municipal court and the criminal court of Cook County, and those of the circuit court, superior court of Cook county, county court, and the city court of Chicago Heights overlap. The extent of the overlappings of jurisdiction, as well as questions as to the exclusive jurisdiction of these courts, have given rise to many problems and considerable litigation. Each court is an organization distinct and separate from the other. Each pursues its way independently of the others. The circuit court and the superior court of Cook County have adopted uniform rules. Each of the other courts has its own rules of practice and procedure. The circuit court, the superior court of Cook county, the county court and the city court of Chicago Heights have the same system of pleading; the municipal court of Chicago has another. There are as many clerk's offices as there are courts. The Chicago Bureau of Public Efficiency estimates that the consolidation of the present clerk's offices into a single organization would make possible a saving of not less than \$100,000 a year. Of this amount \$54,000 is rated by the bureau as overhead expense.⁵³ The numerous clerk's offices often occasion extra work to attorneys engaged in the examination of court records.

The multiplicity of courts often gives the plaintiff an opportunity to choose between different courts and judges. He can watch the leanings of the judges in the different courts and bring his case before the judge or court which is most strongly inclined toward his view. This has been a factor in the distribution of divorce business between the circuit and superior courts. On the other hand, a large number of courts is a nuisance to the litigant and attorney in other respects. Litigants sometimes get into the wrong court. Sometimes the jurisdiction of the various courts is such that it is necessary to resort to two or more courts to dispose of the same controversy. In such a case a separate suit must be started in each of the courts, new issues framed, and the evidence repeated. This causes a duplication of clerical work and requires one judge to listen to evidence which another judge has heard. There is also a great waste of time and energy in the service of process in the various courts. Process in the circuit court and superior court of Cook county is served by the office of the sheriff; process of the municipal court is served by its bailiffs. Each organi-

⁵³ Unification of local governments in Chicago. Report prepared by Chicago Bureau of Public Efficiency, January, 1917.

zation has a set of men running about the city serving summons. A single organization could serve the process of all three courts.

The congestion of work in the various courts has been the subject of much complaint. An attorney desiring a prompt trial and having a choice of courts naturally chooses the one in which there is the least congestion. Some time ago the jury calendars of the circuit and superior courts were two or more years behind. Litigants then brought their cases in the municipal and county courts whenever possible. Soon the jury calendars of these courts got behind. Then the pendulum began to swing back to the circuit and superior courts. Notwithstanding the assistance of down state judges it has not been possible to bring the jury calendars of the various courts up to date. In the municipal court, in order to get a jury trial, it is necessary to ask for one, and to pay a fee of six dollars. This has not stopped jury trials to the extent anticipated. In many instances a jury trial is demanded by a defendant for the purpose of delay. In the other courts of records the parties get a jury trial in a civil case as a matter of course, unless they specifically waive it. Waivers are not frequent enough to be a factor in relieving the congestion on the jury calendars.

The great difficulty seems to be the lack of any directing head of the judicial machine in Cook county. Each court operates as an independent organization. Nor do most of the individual courts have an executive clothed with the requisite authority. Each judge of the circuit and superior court, in the last analysis, is independent of every other judge and of the court, and can hold court at such times and on such calendars as he wishes. The municipal court alone is so organized as to give its chief justice a large executive control over the business of the court.

Appellate courts and supreme courts. There are four appellate districts in the state of Illinois. The first district consists of the county of Cook, the second district includes all the counties in the northern grand division of the supreme court, except Cook County. The third and fourth districts include the counties in the southern and central grand divisions of the supreme court, respectively. In the first appellate district there are at the present time a main court and two branch courts. The two branch courts are organized in the same manner as the main court. The boundaries of the appellate court districts are indicated by heavy lines on the map at page 755.

The judges of the appellate court are assigned to that duty from the circuit court by the supreme court. Judges of the superior court of Cook county are also assignable to duty in the appellate court. Three judges are assigned to each appellate court and branch thereof. Of the nine judges sitting in the appellate court for the first district and its two branches, in December, 1919, four are from the circuit court of Cook County and five are from the superior court of Cook County. All of the three judges sitting in the appellate court for the second district are from circuits embraced wholly or partly within that

appellate district. Of the three judges constituting the appellate court for the third district two are from the thirteenth and fourteenth circuits, respectively, both of which lie wholly without the district. The third is from the ninth circuit, which is partly within the second appellate district and partly within the third. In the fourth appellate district one judge is from the second circuit, which is wholly within this district. The other two judges are from the sixth and eighth circuits, both of which are within the third appellate district. Appellate court judges usually hold circuit court between the sessions of the appellate court. Judges who are assigned to the appellate court for the first district from the circuit and superior courts of Cook County do not, however, sit in the circuit and superior courts while on the appellate bench.

The system of selecting appellate court judges from the circuit court judges is much criticised. Appellate court judges frequently sit in the appellate court in the district in which their circuit is located. A member of the appellate court in such case does not of course sit upon cases which he heard in the circuit court. Many members of the bar feel, however, that even though he does not sit when such cases are heard by the appellate court, nevertheless his presence as a member of the court creates in the minds of his associates a certain reluctance to reverse his decision in the lower court. It is also felt that in many instances the case is reviewed by a judge of no higher caliber than the judge in the trial court. The system is also criticised because it sometimes takes from busy circuits judges who cannot well be spared for appellate court work. We have already seen that the business in the various judicial circuits is not evenly distributed. Some are able to spare judges for appellate court work; others are not. Under such conditions certain circuits must suffer inconvenience or remain unrepresented on the appellate bench.

The supreme court consists of 7 judges, one being elected from each of the supreme court election districts indicated on the map at page 821. The variance in the population of these seven districts has already been noted on page 757. In accordance with the rules of the supreme court of Illinois the chief justice is selected for one year in accordance with a rotary scheme, regard being had to the seniority of the judges.

A brief recapitulation of the jurisdiction of the appellate and supreme courts may be worth while. In criminal cases above the grade of misdemeanors, and in cases involving a freehold, a franchise, or the validity of a statute, there is a direct appeal to the supreme court. Statutes also provide for a direct appeal to the supreme court in eminent domain cases, drainage matters, contests of election for certain officers, cases arising under the workmen's compensation act, appeals from the circuit court of Sangamon County in review of the orders of the public utilities commission, and in other statutory proceedings.

In all other cases appeals must be taken to the appellate court. The decision of the appellate court in such cases is final unless the appellate court grants a certificate of importance or the supreme court a writ of certiorari, or unless the case is one in which there is a con-

stitutional right of appeal to the supreme court. Certificates of importance may be granted in any case, regardless of the amount claimed. In actions *ex contractu* (exclusive of actions involving a penalty) and in all cases sounding in damages the judgment, exclusive of costs, must be greater than \$1,000 in order to obtain a writ of certiorari. The supreme court has original jurisdiction in cases relating to the revenue and in mandamus and habeas corpus. Such original jurisdiction on the part of the supreme court is not exclusive, and is exercised very sparingly by the court. The appellate court has no original jurisdiction.

An examination of the reports of the appellate and supreme courts during the past ten years has been made with a view of ascertaining more definite information as to the actual working of these courts. In the case of the Supreme Court the reports for the years 1910 to 1919 (Volumes 243 to 289, inclusive, but not including rehearings of 1909 cases) were carefully analyzed. The records of the court for this period were also examined for data as to the working of the certiorari law. For the appellate court an examination was made of such reports as were available for the same period; these included volumes 152 to 212, inclusive.

Ten thousand and sixteen cases are reported in Volumes 152 to 212, inclusive, of the appellate court reports. Of these 6,163 were affirmed and 3,692 reversed. One hundred and sixty-one were otherwise disposed of. These figures are analyzed in the tables on p. 895 of the Appendix.

Three thousand eight hundred and seventy-nine opinions are printed in the 47 volumes of the Supreme Court reports analyzed. Of these but 111 were cases involving the exercise of the original jurisdiction of the Supreme Court. Two thousand nine hundred and seventy-six were cases which had been taken direct to the Supreme Court from the trial courts. Seven hundred and ninety-two were cases which had come to the Supreme Court through the appellate court.

Of the 2,976 cases taken direct from the trial courts to the Supreme Court, 1767, or about 59 per cent, were cases in which there is a constitutional right of appeal to the Supreme Court and in which the Practice Act has provided for a direct appeal to that court. In other words, they comprise criminal cases above the grade of misdemeanor and cases involving a franchise, a freehold, or the validity of a statute. The remainder, 1,209, or about 41 per cent, were cases in which there is no constitutional right of appeal to the Supreme Court. They were, however, cases in which various statutes had provided for a direct appeal to the Supreme Court.

Of the 792 cases which had come to the Supreme Court through the appellate court, 308, or approximately 39 per cent, came by certificate of importance, and 397, or about 50 per cent, by writ of certiorari. Sixty-six, or about 8 per cent, were cases in which there is a constitutional right of appeal to the Supreme Court, but in which no provision has been made for a direct appeal from the trial court to the Supreme Court. Twenty-one cases, the remaining 3 per cent, came to the Supreme Court by virtue of statutory appeals prior to the certiorari law of 1909.

The records of the Supreme Court show that during the period from 1910 to 1919 there were 1,660 applications for certiorari to that court. Of these, 469, or about 28 per cent, were allowed. One thousand one hundred and eighty-seven, or about 72 per cent, were denied. Four were pending before the court in December, 1919. The certiorari act of 1909 has greatly relieved the Supreme Court, and without it that court would have been seriously overburdened.

Tables presenting an analysis of the above figures are printed in the Appendix on p. 896, and on the insert at page 896.

V. PROBLEMS OF JUDICIAL ORGANIZATION IN ILLINOIS.

The purpose of this chapter is to set forth the various suggestions which have been made for constitutional changes in the judicial article of the constitution of 1870. Suggestions which, if adopted, will effect a substantial reorganization of the judicial system will be discussed first. Proposals of amendment which assume that the judicial system will remain substantially as at present but which seek to correct certain specific defects now thought to exist in the present system will then be taken up.

Character of judicial article. At the outset attention should be invited to the problem of detail in connection with the judicial article of a proposed new constitution. In other words, to what extent is the system of judicial organization to be retained in the constitution, and to what extent is it to be left to the general assembly? The constitutional conventions in Illinois since 1818 have faced the problem of changing the judicial system to meet the needs of an increasing population. The constitution of 1848 established a rigid system which was soon outgrown, and the constitutional conventions of 1862 and 1869-70 were in a large part made necessary because of the unsatisfactory judicial organization so created. The constitution of 1870 introduced a number of elements of flexibility into the judicial organization but prescribed the details of the system in the text of the constitution itself. This system has created difficulty throughout the state, and was largely responsible for the constitutional amendment of 1904 permitting changes with respect to the city of Chicago.

The provision in the constitution of 1870 relating to Cook County was framed when the county had a population of 350,000. The present judicial organization in Cook County is to be found in the constitution itself. This system, which was suitable to the needs of a population of half a million, is unequal to the demands of a population of two and a half millions. Since the system itself is embodied in the fundamental law of the state, changes are impossible without altering the constitution itself. The establishment of the municipal court of Chicago required a constitutional amendment.

In view of the inconveniences which have arisen under the existing constitution as a result of the mass of detail in its judicial article, the suggestion will be made that the new judicial article omit reference to any other court than the supreme court, giving power to the

general assembly to create inferior courts. This is in substance the plan adopted by the framers of the constitution of the United States. Article III, Section 1 of the federal constitution vests the judicial power in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judicial articles of the constitutions of the following states follow substantially the same language as that of the Federal constitution: Maine, Rhode Island and Oregon (by constitutional amendment, 1910). In Massachusetts, New Hampshire and Vermont the constitutions do not vest the judicial power in any specific courts. In Iowa the constitution provides that "the judicial power shall be vested in a supreme court, district court, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish." (Article V, Section 1). A proposed constitutional amendment was, however, submitted to and rejected by the people of California in 1918 giving the legislature power to provide for all courts inferior to the Supreme Court. A discussion of this proposal will be found in Transactions of the Commonwealth Club of California, Vol. XIII, No. 4 (June, 1918).

The adoption of such a scheme would give to the general assembly the power to create such courts as may be necessary to handle the judicial business of the state, and of the various parts thereof, for any period of time. A judicial system suitable to the needs of the state in 1920 may be unsuitable to its needs in 1950. Unless the proposed constitution is so framed as to permit the general assembly to provide such a system of judicial organization as will meet the needs of a future period, the same situation may develop under the constitution of 1920 which existed under the constitution of 1848 and which has continued in a lesser degree under the constitution of 1870.

If details as to the judicial system are omitted from the constitution, it will of course be possible to simplify greatly the judicial article. Most of the provisions contained in the present constitution can be omitted. If the plan is adopted of creating only the supreme court by the constitution, leaving the establishment of other courts to the general assembly, the constitutional provision should be so worded as to permit the organization of a unified judicial system with the supreme court as an integral part thereof.

Two complete plans have recently been published for the redraft of the judicial article of the constitution of Illinois. One draft is by Mr. Albert M. Kales and appears in the August, 1917, number of the Journal of the American Judicature Society. The essential elements in Mr. Kales' proposal are: • (1) That three districts be constituted for the election of the members of the supreme court, two districts electing two members each; the third district (composed of the counties now in the seventh district) electing three judges; (2) The omission from the constitution of provisions for courts other than the supreme court, vesting jurisdiction "in such inferior courts and other tribunals as the legislature may from time to time ordain and establish", existing courts to remain until replaced as the result of legislative action; (3) Appointment of the clerk of the supreme court by the court itself.

Mr. Hiram T. Gilbert published in 1919 "A proposed judiciary article for the constitution of 1920 with explanatory notes". This proposal with the explanatory notes runs to forty-eight printed pages, and cannot be easily summarized but its essential elements are: (1) The detailed provision by the constitution for all parts of the judicial system, with an effort to make the judicial organization independent of legislative control. In carrying out this policy, methods of practice and procedure are to be taken from the general assembly and vested exclusively in the judicial department, subject to certain limitations; and the judicial department is to determine exclusively the number of its employees, and the amount of appropriations to be made to the judicial department. (2) The supreme court is to be given general supervision over the whole judicial organization of the state. (3) Clerks, sheriffs and employees are to be chosen by the courts themselves. State's attorneys are to be appointed and removed by the attorney general with the approval of the judges. (4) All courts inferior to the supreme court within Cook County (including justices of the peace) are to be consolidated into a court known as the Court of Cook County. All such courts outside of Cook County are to be consolidated into a court to be known as the circuit court. The court of Cook County, and the circuit court (outside of Cook County) are to have two divisions, the original division with branches each presided over by a single judge, and an appellate division composed of not less than three judges designated to this duty from among circuit judges. Branches of the original division are to hold sessions in each county of the state. (5) Judicial circuits are to remain, and at least four judges are to be elected in each circuit for fifteen year terms. Supreme court judges outside of Cook County are also to be elected for fifteen year terms. (6) The supreme court is to consist of nine judges, and the state is to be divided into seven districts. From each of six districts one judge is to be elected by popular vote. The seventh district (Cook County) is to have three judges, appointed by the governor upon the recommendation of a majority of the judges of the court of Cook County, each judge to serve "until his death, resignation, retirement or removal." (7) Judges of the court of Cook County are to be appointed by the governor, upon approval of a majority of the judges of the supreme court. Each judge is to hold office "until his death, resignation, retirement or removal." An election is to be held in Cook County each six years at which the qualified electors may express their disapproval of any judge, and as a result of such an expression of disapproval the office becomes vacant.

Judge Gilbert's proposal also contains provisions regarding judicial vacancies, the coroner, jury and grand jury. Aside from the attempt to set up a judicial department completely independent of the general assembly, Judge Gilbert's aim seems to be much the same as that of Mr. Kales. They both aim at the establishment of a unified judicial system with larger powers over judicial procedure. The one seeks to accomplish this purpose by leaving present details out of the constitution, the other by placing all the details of judicial organization in the constitution.

The unified court. There have been numerous suggestions for the unification of the judicial system both with respect to Cook County and with respect to the state-wide judicial organization. A unified court has been strongly urged for Cook County. The evils of the present system of decentralization are, of course, most marked in a metropolitan community. To remedy these evils, it is proposed to create one trial court for Cook County. This court would absorb the jurisdiction of the following courts: the circuit court of Cook County, the superior court of Cook County, the county court of Cook County, the probate court, the municipal court of Chicago, and the city court of Chicago Heights. It would also absorb the jurisdiction of justices of the peace and police magistrates outside the city of Chicago. The scheme carries with it the abolition of all the courts of record enumerated above, as well as of the justice of the peace system in Cook County outside of the city of Chicago. A bill embodying a plan for a unified court for the city of Chicago was proposed in the fifty-first general assembly (1919). Some of the provisions of this plan are, however, of doubtful validity under the present constitution.

Proposals for unification will in all probability be laid before the constitutional convention. Owing to the lack of flexibility in the present sections of the judicial article it is impossible for the general assembly to create a really unified court either for Cook County or for the down-state counties without encountering constitutional objections. If a unified court is to be established, or if power to establish such a court in the future is to be vested in the general assembly, the existing judicial article will have to be changed.

Justice Vickers, in discussing the Cook County courts, has said:¹

"If the courts of Cook County could be reorganized and placed under the head of a competent chief justice with power vested in him to direct and control the working power of the court, and he could so systematize the business as to get the best possible results from each individual member of the court, I think the capacity of the court would be greatly increased. If your courts could be put under an intelligent executive head with absolute power to direct and control, much in the same manner as the general management of a large commercial or manufacturing establishment is controlled and directed by some one mind, there is no question but that the difficulty [of congested dockets] could be much mitigated if not entirely removed. The trouble is that each individual member of the court has equal power with every other member and is to a large extent a law unto himself and can control his time, energy and ability according to his own wishes."

The American Bar Association has also given much attention to the subject of the unified court both for metropolitan districts and for the state at large. A committee appointed to make an analysis of the court system in the United States made the following recommendations in 1909:²

¹ See *Illinois Law Review*, VII, 235.

² Report of the committee to suggest remedies and formulate laws to prevent delays and unnecessary cost in litigation. *American Bar Association Reports*, 1909, page 578, at page 589.

"1. The whole judicial power of each state, at least for civil causes, should be vested in one great court, of which all tribunals should be branches, departments or divisions. The business as well as the judicial administration of this court should be thoroughly organized so as to prevent not merely waste of judicial power, but all needless clerical work, duplication of papers and records, and the like, thus obviating expense to litigants and cost to the public.

"While the whole judicial power should be concentrated in one court, the court should be constituted in three chief branches: (1) county courts (including municipal courts), having exclusive jurisdiction of all petty causes, all of them to constitute in the aggregate one branch, but with numerous local offices where papers may be filed, and as many places for hearing of causes in each county as the exigencies of business may require; (2) a superior court of first instance (to be called by some appropriate name), having a defined, original, exclusive, general jurisdiction at law, in equity, in probate and administration, in guardianship and kindred matters, and in divorce; this court to have numerous local offices where papers may be filed and at least one regular place of trial in each county, and to be divided into at least two, and probably three, divisions—(a) one for disposition of actions at law and other matters requiring a jury or of kindred nature, (b) one for equity causes and (c) one for probate, administration, guardianship and the like. The first might be called the law division, or the common pleas division, the second the equity or the chancery division and the third the probate division. Possibly many jurisdictions would desire to unite the first two, but it seems to the committee that there is much to be said for separate administration of equity, provided the courts are free to administer whatever relief the case warrants and the distinction is made one of practical administration only. Divorce would be relegated generally to the second division, though there is much to be said for committing it to the third. The third branch would be a single ultimate court of appeal. All judges should be judges of the whole court. They should be assigned in some appropriate way to the branch and the division thereof, or the locality in which they are to sit, but should be eligible and liable to sit in any other branch, or division, or locality when called upon to do so.

"Supervision of the business administration of the whole court should be committed to some one high official of the court who would be responsible for failure to utilize the judicial power of the state effectively. He should have power to make reassignments, or temporary assignments of judges to particular branches or divisions or localities as the state of judicial business, vacancies in office, illness of judges or casualties may require. Likewise, he should have the power, subject to general rules, to assign or transfer causes or proceedings therein for hearing or disposition according to the condition of dockets for the time being, and it should be his duty to see to it that the energies of the judicial department are employed fully and efficiently upon all business in hand. What this official of the whole court does for the general supervision of its affairs, should be done for each branch and each division, and where there are large cities, for each locality, by

some official specially charged with this duty and responsible for the efficient and business-like conduct of its affairs and disposition of causes upon the dockets. This official should be a judge, not a clerk, and the responsibility laid on him should be such as to guard against abuse of his office and insure efficiency.

"In like manner the business administration of the court should be organized. The whole clerical and stenographic force should be under control and supervision of a responsible officer and an officer in each branch, division, and, if necessary, each locality, should have a like duty and a responsibility for efficient conduct of business commensurate therewith. The office in each locality could be an office for filing papers for the whole court and every branch and division thereof; the papers to be kept there when required in the locality, or transmitted to the proper office elsewhere. Legislation should not attempt to lay down details upon this subject. The general principles should be settled, and the remainder should be left to rules of court to be devised, altered and improved as experience points out the problems to be met and the best solutions thereof.

"In dealing with the subject of expense in the administration of justice, this subject of organization of the business side of the judicial department is of especial importance. We have carried decentralization of courts to such an extreme that in many jurisdictions the clerks are practically independent functionaries over whom courts have little real control. In some jurisdictions the clerks of supreme and appellate courts are elective officers. It is a pretty general practice to have an elective clerk of the superior court of general jurisdiction (by whatever name called) in each county. Each clerk is not merely, to a considerable degree, independent of effective judicial control, but he is wholly independent of every other clerk. No one is charged with supervision of this important branch of the judicial system. It is no one's business to make this part of the system effective, to obviate waste and needless expense and to promote improvement. The fee-system has often tended to make earning and collection of fees one of the chief objects which engrosses the clerk's attention. There is much unnecessary duplication and recopying of papers; judicial records are needlessly prolix, and hence unduly expensive. These and kindred matters may be met best by organization of the purely business side of the courts, and providing for competent and efficient supervision thereof.

"There is room for difference of opinion, no doubt, with respect to the proposition to include the tribunals for dispatch of petty causes in the scheme for unification of the judicial system. It was the original plan of those who drew the judicature act in England to incorporate the county courts in their scheme. (Report of Judicature Commission, 1869, p. 13.) This portion of their plan failed of adoption. But the reasons in support of it are most cogent. The municipal court of Chicago has shown that it is perfectly feasible to administer a much higher grade of justice in petty causes than that dispensed by justices of the peace without resorting to the cumbrous and expensive machinery of our superior courts of record. The system of committing petty causes to justices of the peace, subject to appeal to some superior court, and

review of its judgment by a court of appellate jurisdiction, is too often a denial of justice to the weaker litigant. It compels men to forego just claims against those who can afford to litigate to the end, because of the delay and expense involved in asserting them. Petty causes demand good judges no less than causes involving larger sums. The judges to whom such causes are committed ought to be of such caliber that but one review should be necessary, and that confined to questions of law. The original reason for our present system was the desire to bring justice to everyone's back door in his own locality at a time when communication was slow and difficult. Under present conditions of travel the result may be reached in another way. A county judge, or a number of county judges, may go to every part of a county to try causes and dispatch business, and there may be as many local offices for filing papers and beginning causes as business may require. Nor will such plan involve undue expense through requiring additional judges. Our present system involves waste of judicial power to such extent that more judges are now employed in many jurisdictions than a unified and thoroughly organized system with a simplified practice would demand. The county judges would be eligible to serve in any branch or division where their services for the time being might be demanded, and, on the other hand, judges assigned to other work might be used, whenever necessary, to assist in disposing of petty litigation.

"It may be objected, also, that the scheme proposed is at variance with our ideals of home rule and local independence. But a loose judicial organization is not necessary to home rule and local administration of justice. Organization of the courts, and, above all, organization of the business of the courts with a view of making the most of the judicial machinery, will permit judges to go to each locality where business awaits them, dispatch it, and be sent somewhere else in accordance with an intelligent plan and under the direction of someone whose duty it is to see that the work of the court is provided for and disposed of.

"The advantages of such an organization of the courts, of judicial business and of the clerical and administrative work of the courts are nine:

"(1) In the first place, it would make a real judicial department. The federal department of justice, under the headship of the attorney general, gives to the general government something in the line of what is proposed. But it is not in accord with the genius of our legal institutions that one who practices in the courts should be head of a department comprising the courts and charged with the supervision thereof. The several states accordingly have courts, but they do not have any true judicial department.

"(2) It would do away with the waste of judicial power involved in our present system of separate courts with hard and fast personnel. Where judges are chosen for, and their competence is restricted to rigid districts, or circuits, or courts, or jurisdictions, it is a familiar consequence that business may be congested in one court while judges in another are idle. Devices for exchange of judges, or invitation to sit in another district, may sometimes mitigate this evil to some extent, but

they do not reach its source. In this respect the federal circuit courts and circuit courts of appeals are a model of flexible judicial organization. The judicial department should be so organized that its whole force may be applied to the work in hand for the time being, according to the exigencies of that work.

"(3) It would do away with the bad practice of throwing causes out of court to be begun over again, in cases where they are brought or begun in the wrong place. They may be transferred simply and summarily to the proper branch or division, or rules may provide that the cause may be assigned at the outset to the place and the division where it belongs, and no question of jurisdiction of subject matter will stand in the way.

"(4) It would do away with the great and unnecessary expense involved in transfer of causes, obviating all necessity of transcripts, bills of exceptions, certificates of evidence and the like, and permitting original files, papers and documents to be used, since each tribunal, as a branch or division of the whole court, may take judicial notice of all files, papers and documents belonging to the court.

"(5) It would obviate all technicalities, intricacies and pitfalls of appellate procedure. An appeal would be merely a motion for a new trial, or for modification or vacation of the judgment before another branch of the same great court. It would require no greater formality of procedure than any other motion.

"(6) It would do away with the unfortunate innovation upon the common law which obtains in many states by which venue is a place where an action must be begun, rather than a place where it is to be tried, so that a mistake therein may defeat an action entirely instead of resulting merely in a change of the place of hearing. This innovation is especially unfortunate when it is applied to equity causes, where originally there was no venue. If all tribunals are parts of one court, there need be nothing beyond a transfer of the cause. All proceedings up to the date thereof may be saved.

"(7) It would obviate conflicts between judges of coordinate jurisdiction, such as unhappily obtain too often in many localities under a completely decentralized system, which depends wholly upon the good taste and sense of propriety of individual judges, or the slow process of appeal to prevent such occurrences. But a short time since it became a matter of comment and criticism in one of the great cities of the country that judges, who were supposed to be trying causes with juries only, would take up divorce cases and dispose of them out of the usual order, although they were supposed to be heard only by the judges engaged in hearing equity causes. As most of our courts are organized at present, there is nothing to prevent any judge trying any cause pending in the court he pleases, however foreign to the work he and his colleagues have agreed he shall attend to.

"(8) It would allow judges to become specialists in the disposition of particular classes of litigation. The prevailing system of rotation is unfortunate. Usually where there are a number of judges they take up in rotation civil trials with juries, equity causes and criminal causes. It is becoming unusual for a judge to be kept continuously to any one

class of causes so as to become thoroughly familiar therewith. This specialization was the real advantage of separate courts of law and equity. Instead of separation between law and equity in procedure; the desirable thing is specialization in administration. The way to obtain this is to organize the courts in such way that judges may be assigned permanently to the work for which they prove most fit. So long as they make the assignment by agreement among themselves, the tendency to follow the line of least resistance will result in the unfortunate practice of periodical rotation.

"(9) Finally, it would bring about better supervision and control of the administrative officers connected with judicial administration, and make it possible to introduce improved and more business-like methods in the making of judicial records and the clerical work of the courts.

"The foregoing plan for unification of the courts and simplification of judicial organization would require constitutional amendments in each jurisdiction. Hence the committee do no more than submit it to the Association in order that attention may be called to the advantages of such an organization. Proposals for re-organization of the judicial system are now agitating in several states, and it seems desirable to record the opinion of the committee as to the lines along which re-organization should proceed."

The few elements in the present Illinois judicial system tending toward unification have already been pointed out. Recapitulated, these elements are the following:

(1) In case of disagreement among the circuit court judges as to the counties in which they are severally to preside, the chief justice of the supreme court shall assign the judges to such counties in their circuits as he may determine.³

(2) The chief justice of the supreme court may assign any circuit court judge who is not occupied in holding court in his own circuit to some other circuit when a necessity arises therefor.⁴

(3) Whenever two judges of any circuit, exclusive of Cook County, or a majority of the judges of the circuit court of Cook County, or the superior court of Cook County, state in writing to the supreme court that the business of their circuit requires the assistance of additional judges, the supreme court may, by written order, assign a judge of another circuit (or of the circuit or superior court of Cook County) to duty in this circuit. This is subject to the proviso that no judge in any circuit or superior court shall be required to hold court outside of his circuit or Cook County when the business of his own court requires his services.⁵

(4) Statutes provide that county judges may interchange with other county judges, probate judges, or city judges;⁶ that probate judges may hold court for other probate judges, county judges, or city judges;⁷ that city judges may interchange with each other and with

³ Jones & Addington, Illinois Statutes Annotated, Vol. 2, Sec. 3067.

⁴ Jones & Addington, Illinois Statutes Annotated, Vol. 2, Sec. 3067.

⁵ Hurd's Revised Statutes, Chap. 37, Sec. 821.

⁶ Hurd's Revised Statutes, Chap. 37, Sec. 215a.

⁷ Hurd's Revised Statutes, Chap. 37, Sec. 215h.

county, probate and circuit judges;⁸ that circuit judges may hold court for city judges and interchange with each other.⁹

(5) All judges of courts of record, inferior to the supreme court, are required by the constitution to report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest.¹⁰

(6) Judges of the supreme court are required by the constitution to report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist together with appropriate forms of bills to cure such defects and omissions in the laws.¹¹

(7) The judges of the circuit courts are required by the constitution to report to the next general assembly the number of days they have held court in the several counties composing their respective circuits.¹²

We have seen that these provisions do not, as a practical matter, go very far toward unifying the Illinois judicial system. The statutory provision for the interchange of judges is the only one which is utilized to any appreciable extent. In cases of emergency, the supreme court at times assigns a judge from one circuit to duty in another circuit. Such matters are, however, more frequently arranged by negotiations between the different judges without involving the supreme court. Beyond this, the statutory and constitutional provisions referred to are not used or are disregarded. They are ineffective so far as securing any real unification is concerned.

One of the strongest obstacles in the path of unification of the courts in Illinois is the method of choosing the chief justices of the various courts. Under the rules of the supreme court the chief justice is selected under a scheme of rotation, each judge serving for one year. In the appellate court the presiding justice is selected by the three judges of the court for such period of time as they may determine. In both the circuit court of Cook County and the superior court of Cook County the judge having the shortest unexpired term is by the terms of the constitution, the chief justice. There is no chief justice or supervisory officer in the down-state judicial circuits. With chief justices selected in this manner it is not possible to develop any high degree of administrative control over the judicial machinery.

The most distinct element of unity in the judicial organization in the State of Illinois is that involved in the statutory organization of the municipal court of Chicago. The chief justice of this court is elected as such for the entire length of his term, and is vested by statute with a large degree of supervision over the work of the entire court.

It will be of interest to note what steps have been taken toward unification in other states. Several states have vested the supreme court with supervisory control over the inferior courts. The constitution of Michigan¹³ provides that "the supreme court shall have a general superintending control over all inferior courts". Similar pro-

⁸ Hurd's Revised Statutes, Chap. 37, Sec. 245.

⁹ Hurd's Revised Statutes, Chap. 37, Sec. 57.

¹⁰ Constitution of 1870, Art. VI, Sec. 31.

¹¹ Constitution of 1870, Art. VI, Sec. 31.

¹² Constitution of 1870, Art. VI, Sec. 31.

¹³ Michigan constitution, Art. VII, Sec. 4.

visions are to be found in the constitutions of Missouri,¹⁴ New Mexico,¹⁵ and Wisconsin.¹⁶ In Oklahoma¹⁷ the constitution provides that "the original jurisdiction of the supreme court shall extend to a general superintendent control over all inferior courts and all commissions and boards created by law". Similarly in Arkansas¹⁸ the supreme court has a "general superintending control over all inferior courts of law and equity". In Colorado,¹⁹ North Dakota,²⁰ South Dakota,²¹ Wyoming²² and Montana,²³ the supreme court is given a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law. In Louisiana²⁴ and Iowa,²⁵ the supreme court is given the power to exercise a supervisory control over all inferior judicial tribunals.

In Missouri,²⁶ in addition to the general superintending control over all inferior courts given to the supreme court, it is provided that "the circuit court shall exercise a superintending control over criminal courts, probate courts, county courts, municipal corporation courts, justices of the peace, and all inferior tribunals of each county in their respective circuits" and that the St. Louis Court of Appeals shall have "a superintending control over all inferior courts of record" in the counties in which it has jurisdiction.

Other states have sought to secure unification by vesting in the supreme court a fairly large amount of rule-making power. The constitutional provisions in these states will be set forth in the following section, where the proposal to secure unity in the judicial organization through a control over the rule-making power is discussed.

Other states have sought to develop unity in their system of trial courts by what may be termed the single trial court system. California, Arizona, Indiana and Iowa have either a single trial court system or a system which is essentially a single trial court system.

In view of the fact that many lawyers have suggested that some such system be established in Illinois, it may be of interest to note briefly the salient features of the court organization in these four states.

In Arizona and California there is one court in each county exercising complete jurisdiction. In the smaller counties a single judge presides over this court. In the more populous counties more than one judge is required to handle the business of the court. In the counties of Los Angeles and San Francisco in California there are from fifteen to twenty judges.

Indiana likewise has what is essentially a single court system. This court, which is called the circuit court, usually embraces a single

¹⁴ Missouri constitution, Art. VI, Sec. 3.

¹⁵ New Mexico constitution, Art. VI, Sec. 3.

¹⁶ Wisconsin constitution, Art. VII, Sec. 3.

¹⁷ Oklahoma constitution, Art. VII, Sec. 2.

¹⁸ Arkansas constitution, Art. VII, Sec. 4.

¹⁹ Colorado constitution, Art. VI, Sec. 2.

²⁰ North Dakota constitution, Art. IV, Sec. 86.

²¹ South Dakota constitution, Art. V, Sec. 2.

²² Wyoming constitution, Art. V, Sec. 2.

²³ Montana constitution, Art. VIII, Sec. 2.

²⁴ Louisiana constitution, Art. 94.

²⁵ Iowa constitution, Art. V, Sec. 4.

²⁶ Missouri constitution, Art. VI, Secs. 23, 12.

county. In a few instances, however, two small counties have been combined to form a single circuit. The circuit court in Indiana has complete jurisdiction in all matters and in most counties is the only court of record. In some of the larger communities, however, there have been established additional trial courts with extensive original jurisdiction. Of these additional courts the superior court has civil jurisdiction, the criminal court criminal jurisdiction, and the probate court jurisdiction over probate matters.

Iowa has what is known as the district court system. The district comprises one or more counties. From two to five judges are elected for each district, according to its size. The judges move in rotation over the district. This court has complete jurisdiction over all matters, and, except in the few cities having superior courts or municipal courts or both, it is the only court of record. The clerks of the district court are county officers and have a permanent office at their respective county seats. The clerk is empowered to act as to all formalities in probate matters. Under certain circumstances he may make orders, but this power is seldom exercised.

Reports from these four states seem to indicate that the system is generally regarded as satisfactory. In California and Arizona there is, of course, a waste in maintaining separate courts in sparsely settled counties. This difficulty is overcome to a certain extent in Indiana by combining smaller counties into one circuit, and in Iowa by combining several counties into a district.

The proposal for a single trial court system in Illinois has been much discussed by the members of the bar. Under such a system there may be elected at least one judge in each county, this judge to exercise the combined jurisdiction of the present circuit, county, city and probate judges. In the larger counties it would, of course, be necessary to elect more than one judge. The following arguments have been advanced in behalf of such a system:

(1) It will do away with litigation involving jurisdictional questions.

(2) It will effect a consolidation of clerks' offices, thereby promoting efficiency and economy.

(3) It will result in a more speedy disposition of litigation, owing to the fact that the judge will always be at home and available to dispose of cases brought before him. The proponents of this system also suggest the abolition of terms of court. The proposed single court is to sit continuously.

(4) It will effect complete unification of the rules of practice and procedure in trial courts of record.

(5) It will enable the smaller counties to obtain a more effective political control over the judge. It is contended that small counties in large circuits have no voice whatever in the selection of circuit judges and that, not being dependent upon the smaller counties for re-election, some circuit judges are not responsive to the needs of such counties. This argument will not, of course, apply if the present circuit organization of Illinois is taken as the basis of a unified court organization.

The following objections have been made to the single court system:

(1) There are four counties in this state having a population of less than ten thousand, and sixteen counties of less than fifteen thousand. There is a relatively small amount of judicial business in counties of this type. It is estimated that in some of the rural counties of this state the combined work of the county and circuit courts would not take up one-third of the time of a single judge. A single judge system would work extravagantly in such counties, were the Arizona or California system to be adopted. If, however, the less populous counties were combined as in Iowa or Indiana this argument would lose much of its force. Any scheme of combining counties must, of course, provide for the speedy handling of probate matters in each county.

(2) Many lawyers seem to be quite unwilling to appear before the same judge in all proceedings. This unwillingness is based in part on the fact that lawyers are oftentimes not in harmony with one judge and on this account like to be able to change from one judge to another. The present circuit court system, as well as the present system of courts of overlapping jurisdiction makes it comparatively easy to change from one judge to another without asking for a change of venue. This objection does not seem to be borne out by reports from other states. Iowa, of course, with its district court system, has somewhat the same flexibility in this respect as the present Illinois circuit system, in that although there is but one court, there are several judges in that court. Lawyers in Arizona, California and Indiana, however, point out that the necessity of appearing before the same judge in all proceedings causes no serious difficulty. In these states changes of venue are obtained as a matter of course.

(3) The county is the unit of the party political organization. If a single trial court system for each county is adopted, the election of the judge of this court will be more readily subject to political control. On the other hand the present judicial circuit serves one purpose only, and that is the election of circuit judges. It has been suggested that more satisfactory results will be obtained if judges are elected from a circuit or district which is not the unit of political organization. Of course the election of judges for a longer term and at times different from the election of other officers, as is the case under the present constitution of Illinois, meets to some extent the objection here urged.

While no plans for a completely unified state judicial system have yet been adopted in this country, a number of proposals have been made in recent years. One of the first specific proposals is a "First Draft of a State-Wide Judicature Act," issued as Bulletin No. VII of the American Judicature Society in 1914. A plan for a unified court was submitted to the Mississippi State Bar Association in 1917 by a committee of that body [See *Journal of the American Judicature Society*, Vol. I, p. 15 (June, 1917).] The Phi Delta Phi Club of New York prepared an elaborate report, with a draft of a proposal for a unified judicial system, and this report was published in the *Annals of the American Academy of Political and Social Science* for September,

1917. The text of the proposal will also be found in the *Journal of the American Judicature Society* for October, 1917.

A commission appointed by the Oregon Supreme Court, under legislative authorization, to report plans for the improvement of the judicial system, reported unanimously in favor of certain matters which would introduce a small element of unity into the judicial system; two members reported in favor of a completely reorganized and unified judicial system. [See *Journal of the American Judicature Society*, Vol. 2, p. 145 (February, 1919).] Such a judicial reorganization may be accomplished by statute in Oregon, for in that state since 1910, the judicial power of the state is "vested in one Supreme Court and in such other courts as may from time to time be created by law."

A proposed constitutional amendment for a unified court was submitted to the Oklahoma State Bar Association in 1919 by a committee of that body. This proposal is detailed in character. The latest published proposal for a unified court is one prepared by the American Judicature Society and published in the December, 1919, number of the *National Municipal Review*. This proposal contemplates leaving a large amount of discretion to the legislature in organizing a state judicial system.

It has also been suggested, in connection with the proposal for unification, that if it is not desired to go so far as to grant a wide superintending control to the supreme court, it might be wise to vest in the supreme court the right to issue writs of prohibition. Such a power is vested in the supreme courts of the following states by constitutional provision: Ohio, West Virginia, Idaho, Utah, South Carolina, Arizona, California, Louisiana, Nevada, Washington, Wyoming, Delaware and Arkansas.

Rules of court. Proposals to confer rule-making power upon the courts will be placed before the convention. From a logical point of view such proposals should be discussed in connection with the unified court, since the conferring upon the courts of the power to make rules of procedure is one of the more important methods of securing unity. While at common law the rule-making power was to a certain extent in the courts, this power has been in large part absorbed by the legislature. Legislatures usually do one of two things: they either lay down very meager rules on the subject or else formulate a code consisting of hundreds of sections, as in New York. In recent years there has been a well defined movement to take this power, in part at least, from the legislature and confer it upon the courts. This movement has taken two forms. One school has sought to take the rule-making power from the legislature in its entirety. In other words, it advocates the development of the rule-making power in the courts as a means of taking over the entire field of procedural regulation. A second group has taken a middle ground. The contention of this group is that the present rule-making power should be centralized in the judicial organization and somewhat extended, not with a view of vesting in the courts com-

plete power over procedural regulations, but primarily as a means of securing a unified control over the judicial structure.

In Illinois each court may make rules for the conduct of its business. Such rules must, however, be consistent with the general law.²⁷ The details of procedure are largely embodied in the Illinois statutes. A large degree of rule-making power has, however, been given to the municipal court of Chicago, and to various administrative tribunals such as the court of claims, the industrial commission, and the public utilities commission. No court possesses power to make rules for other courts.²⁸ Within the last few years bills, sponsored by the Illinois Bar Association, and seeking to vest in the supreme court a large degree of rule-making power, have been introduced in the general assembly at each of its regular sessions.

The vesting of a certain degree of rule-making power in the courts is now an accomplished fact in several jurisdictions. In England the judicature act of 1873 gave the courts a large degree of rule-making power.²⁹ The supreme court of the United States has a large degree of rule-making power and has drafted the equity rules for the federal courts. In Colorado the rule-making power was given to the supreme court by statute in 1913.³⁰ Both there and in England the first rules drafted by the court met with criticism. They were subsequently changed and now appear to be satisfactory. The New Jersey courts have exercised the rule-making power since 1912.³¹ Section 5 of Article VII of the constitution of Michigan provides that "the supreme court shall by general rules establish, modify and amend the practice in such court and in all other courts of record, and simplify the same." Information from Michigan indicates that this power has been rather sparingly exercised.

The question of the constitution of the rule-making body has occasioned considerable discussion. The bills introduced in Illinois vested this power in the supreme court. In Michigan, Colorado and New Jersey this power is vested in the supreme court; in Michigan by the constitution, and in Colorado and New Jersey by statute. Objection has, however, been made to vesting the rule-making power in the supreme court. It is argued that a body as busy as most supreme courts are is likely to fail to exercise the power. The Michigan supreme court has, for instance, rather sparingly exercised its power. Furthermore it is contended that many of the rules to be formulated pertain to trials and that members of the supreme court may not be conversant with the needs of the trial court. In Colorado and England the rules drafted by the highest courts proved unsatisfactory, but the revisions drafted with the assistance of trial judges and lawyers worked well. It has been suggested that if all of the courts are represented in the rule-making body, that body is likely to frame more successful rules than would be framed by the members of a single court. The American Judicature Society in its plan for a unified court proposes to vest the rule-making

²⁷ *Rozier v. Williams*, 92 Ill. 187. (1879).

²⁸ *Murray v. Whittaker*, 17 Ill. 230. (1855).

²⁹ Supreme Court Judicature Act, Sec. 75.

³⁰ Laws of 1913, page 445.

³¹ Laws of 1912, Chap. 231, Sec. 32.

power in a council composed of the chief justice and heads of the various divisions of the unified court.³²

The question of the degree of rule-making power to be vested in the courts has already been raised. The two tendencies have been pointed out. Mr. Hiram T. Gilbert, in a pamphlet on "A Proposed Judiciary Article for the Constitution of 1920 with Explanatory Notes" proposes to divest the general assembly of practically all control over judicial procedure.³³ In Colorado and New Jersey the courts can apparently alter or amend existing statutes. In 1917 a resolution to submit a constitutional amendment giving the courts exclusive power to make procedural rules was introduced in the California senate.

The plan of the American Bar Association, on the other hand, provides that the general assembly should lay down the general outlines of the procedural system, the courts to supply the detail. The bill sponsored by the Illinois Bar Association contained many details regulating procedure and limited the power of the supreme court to that of making rules not inconsistent with the statute.

One difficulty should be pointed out in connection with the proposal to take from the legislature all power with respect to judicial procedure. In our system of law substantive rights are often tied up with procedural rules, and the adoption of such a scheme as Mr. Gilbert proposes would create in our legal system an uncertain boundary between legislation affecting substantive rights and rules of procedure promulgated by the courts. If, on the other hand, some more conservative provision for vesting rule-making power in the courts is adopted, such a difficulty is less likely to arise.

Statutes conferring rule-making power upon the courts raise serious constitutional questions. Article III of the constitution of 1870 provides that the powers of government shall be divided in three departments, the legislative, the executive and the judicial and that "no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted".³⁴ A statute conferring a wide power upon the courts to regulate their own procedure may, therefore, be open to the objection that it confers legislative power upon the judicial department. A statute in Nebraska enacted when the supreme court judges also sat as district judges gave to the judges of the supreme court power to make rules for both the supreme court and the district court. After the judicial organization was so changed that the supreme court judges no longer sat in the district court, it was assumed in *Hunter v Union Life Insurance Co.*, 58 Neb. 203, that the judges of the supreme court, notwithstanding the statute, had no power to make rules for the district court. On the other hand, in the case of *the City of Chicago v Coleman*, 254 Ill. 338 the court said, in answer to the argument that the general assembly could not delegate power to the municipal court of Chicago to prescribe forms of entries of orders, that "the power to make rules of

³² Bulletin VIIa, American Judicature Society, page 75.

³³ Gilbert, Hiram T., *A Proposed Judiciary Article for the Constitution of 1920 with Explanatory Notes*, Article VI, Section 2, pages 9-10.

³⁴ Constitution of 1870, Article III.

court is not legislative but judicial". The court in this case, however, was discussing the power of the court to make rules for the conduct of its own business and not its power to make rules for other courts. If, therefore, it is proposed to give to one court the power to make rules for other courts, a constitutional change would seem to be involved.³⁵

System of appeals. Proposals will be made to alter the present system of appeals in Illinois. The present practice of assigning circuit court judges to duty on the appellate court is unsatisfactory to many members of the bar. There is a strong feeling that if the appellate court is to be retained, provision should be made for the election of appellate court judges by the voters of the appellate court district in which they sit. Another proposal involves the abolition of the appellate court altogether, an increase in the number of judges of the supreme court, and the division of the supreme court into sections.

In this connection it will prove of interest to note the measures which have been adopted in other states to take care of the rapidly increasing amount of work in appellate tribunals. In the following states the highest court, by constitutional provision, sits in sections, or is authorized to do so: California,³⁶ Colorado,³⁷ Florida,³⁸ Kansas,³⁹ Mississippi,⁴⁰ and Missouri.⁴¹ The same result is obtained in Alabama,⁴² Georgia,⁴³ Iowa,⁴⁴ Ohio,⁴⁵ and Oregon⁴⁶ by statute. The constitution of Washington⁴⁷ gives the legislature power to provide for departments.

The constitutions of the following states have established intermediate appellate courts between the trial court and the highest court: California,⁴⁸ Georgia,⁴⁹ Louisiana,⁵⁰ Missouri,⁵¹ New Jersey,⁵² New York,⁵³ Ohio,⁵⁴ and Texas.⁵⁵ In Alabama,⁵⁶ Indiana,⁵⁷ Pennsylvania,⁵⁸ and Tennessee,⁵⁹ such courts have been created by statute.

³⁵ For a discussion of the constitutionality of conferring the rule-making power upon the courts see Pound: Regulation of Judicial Procedure by Rules of Court, 10 Ill. Law Review 163. (1915).

³⁶ California constitution, Art. VI, Sec. 2.

³⁷ Colorado constitution, Art. VI, Sec. 5.

³⁸ Florida constitution, Art. V, Sec. 4.

³⁹ Kansas constitution, Art. III, Sec. 2.

⁴⁰ Mississippi constitution, Art. VI, Sec. 177 b.

⁴¹ Missouri constitution Art. VI, amendment of 1890, Sec. 1.

⁴² Civil Code, Sec. 5849 (Acts) of 1903, p. 493).

⁴³ Parker's Code of Georgia (1914), Secs. 6110-6112.

⁴⁴ Code of Iowa (Supplement of 1913), Sec. 194, p. 99.

⁴⁵ Page & Adams Ann. General Code (1912), Sec. 1467.

⁴⁶ Laws of 1913, p. 294.

⁴⁷ Washington constitution, Art. IV, Sec. 2.

⁴⁸ California constitution Art. VI, Sec. 4.

⁴⁹ Georgia constitution Art. VI, I, Sec. 1.

⁵⁰ Louisiana constitution Sec. 84.

⁵¹ Missouri constitution Art. VI, Sec. 1.

⁵² New Jersey constitution Art. VI, I, Sec. 1.

⁵³ New York constitution Art. VI, Sec. 2.

⁵⁴ Ohio constitution Art. IV, Sec. 1.

⁵⁵ Texas constitution Art. V, Sec. 1.

⁵⁶ Acts of 1911, p. 319.

⁵⁷ Burns' Annotated Statutes, Sec. 1382, p. 798

⁵⁸ Pepper & Lewis' Digest, Sec. 6895.

⁵⁹ Shannon's Annotated Code, (1917), Sec. 6312.

From the above it will be seen that the following states have adopted both expedients: Alabama, California, Georgia, Missouri and Ohio.

In the states listed below membership in the highest court has been increased since 1900 as pointed out:

Kansas, 1900 (from two to seven)
 Florida, 1902 (from three to six)
 West Virginia, 1902 (from four to five)
 Wisconsin, 1903 (from five to seven)
 Colorado, 1904 (from three to seven)
 Nebraska, 1908 (from three to seven)
 North Dakota, 1908 (from three to five)
 South Carolina, 1910 (from three to four)
 Ohio, 1912 (from five to seven)
 Mississippi, 1914 (from three to six)

Certain states have attempted to relieve the supreme court by providing for the finality of decisions of the intermediate court of appeals in a manner somewhat analogous to that of the Illinois certiorari law of 1909. This arrangement is effected by the constitutions of California,⁶⁰ Georgia,⁶¹ Missouri,⁶² Louisiana,⁶³ New York,⁶⁴ and Ohio.⁶⁵ It is accomplished by statute in Alabama,⁶⁶ Indiana,⁶⁷ Pennsylvania,⁶⁸ Tennessee,⁶⁹ and Texas.⁷⁰

Virginia has provided, as a remedy for congestion in its appellate system, the creation of a special court of appeals. Section 89 of Article VI of the constitution of 1902 provides that "the general assembly may, from time to time, provide for a special court of appeals to try any cases on the docket of the supreme court of appeals in respect to which a majority of the judges are so situated as to make it improper for them to sit; and also to try any cases on said docket which cannot be disposed of with convenient dispatch. The said special court shall be composed of not less than three nor more than five of the judges of the circuit courts and city courts of record in cities of the first class, or of the judges of either of said courts, or of any of the judges of said courts, together with one or more of the judges of the supreme court of appeals." Information from Virginia indicates that thus far there has been no occasion to make use of this provision. Under a provision in the constitution of 1869, similar to that in the present constitution, such a separate court of appeal is reported to have been organized, and to have done excellent work.

New York and Ohio have also made provision for relieving the supreme court in case its work become congested. In New York the

⁶⁰ California constitution Art. VI, Sec. 4.

⁶¹ Georgia constitution Art. VI, Sec. 2, Pars. V and IX.

⁶² Missouri constitution Art. VI, Sec. 12.

⁶³ Louisiana constitution Sec. 101.

⁶⁴ New York constitution Art. VI, Sec. 9.

⁶⁵ Ohio constitution Art. IV, Sec. 6.

⁶⁶ Alabama general laws 1911, p. 95.

⁶⁷ Indiana Acts 1891, p. 39 as amended by Acts 1893, p. 29; Acts 1901, p. 565; Acts 1907, p. 237.

⁶⁸ Purdon's Digest, Vol. 4, p. 4506 ff.

⁶⁹ Thompson's Shannon's Code, Secs. 6321 a, 6321 a-1, 6321 a-2, 6322.

⁷⁰ McEachin's Texas Civil Stats. Ann. Arts. 1521-2, 1591.

constitution provides that "whenever and as often as a majority of the judges of the court of appeals shall certify to the governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate not more than four justices of the supreme court to serve as associate judges of court of appeals". In Ohio the general assembly may, on application of the supreme court, provide for the appointment of a commission of five members to dispose of such part of the supreme court docket as may be assigned to it. The commissioners are appointed by the governor with the advice and consent of the senate. Their term cannot exceed two years, and the commission cannot be created oftener than once in ten years.⁷¹

Reports from Ohio indicate that this commission has been used on two occasions, first from 1875 to 1879, and later in 1884 and 1885. Both commissions consisted of able men. There is, however, a tendency among the Ohio bar not to give the opinions of these commissions quite the standing of the opinions of the Supreme Court. In citing them lawyers are careful to call attention to the fact that it is the commission and not the Supreme Court that is speaking.

Proposals will also be made to insert into the constitution a provision seeking to place a limit upon the number of appeals. We have already seen that in cases begun in justice of the peace courts and in probate matters two trials and two reviews by appellate courts are possible. Cases started in the county, circuit and city courts may conceivably be reviewed by two appellate tribunals. Ohio, by constitutional amendment in 1912, sought to prevent the multiplicity of appeals by making the decisions of the intermediate court of appeals final, "in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court." In other words, Ohio has sought to accomplish by constitutional provision what Illinois and other states have done by statute.

In this connection attention is invited to the fact that under the constitution of 1870 appeals, except in a limited number of cases, are now a statutory rather than a constitutional matter. There would seem to be a constitutional right of appeal to the supreme court only in "all criminal cases and cases in which a franchise or freehold, or the validity of a statute is involved".⁷²

Should the convention adopt the plan of organizing the judicial work of the state into county units, with a consolidation into one court of the jurisdiction of the present probate, county, city and circuit courts, and if the present appellate court system is retained, it will, of course, be necessary to make other arrangements for the selection of appellate court judges.

⁷¹ Constitution of Ohio, Art. IV, Sec. 22.

⁷² Constitution of 1870, Art. VI, Sec. 11. Also see *Young v Stearns*, 91 Ill. 221 (1878).

Proposals of a Less Fundamental Character.

It is now proposed to discuss briefly certain proposals of changes which will be suggested to the convention involving technical modifications of the present system, provided this system is substantially retained in the new constitution.

Probate Matters.

(a) Testamentary trusts. The question of testamentary trusts will undoubtedly come before the convention. Under the present constitution the supreme court has held that the administration of testamentary trusts is a chancery matter and not a probate matter, and that the general assembly can not extend the jurisdiction of probate courts to include the administration of such trusts. There is a strong feeling among a large number of members of the bar that probate courts should be empowered to administer testamentary trusts, or, at least, that the jurisdiction of probate courts should be so defined as to give the general assembly power to vest such jurisdiction in them.

Should a single trial court system be established, the problem of testamentary trusts would at once be solved.

In New York the surrogate's court, which corresponds to our probate court, has statutory jurisdiction to direct and control the conduct and settle the accounts of testamentary trustees, to remove testamentary trustees, and to appoint a successor in place of a testamentary trustee. It also has power to enforce the payment of debts and legacies; the distribution of the estates of decedents, and the payment or delivery by executors, administrators, and testamentary trustees, of money or other property in their possession belonging to the estate or fund.⁷³

In Massachusetts the probate court is given jurisdiction of all cases and matters relative to the administration of trusts which are created by will.⁷⁴

(b) Construction of wills. Suggestion will be made that authority to construe wills should also be vested in the probate court. Under the existing system the construction of a will is a matter of chancery jurisdiction. Some lawyers feel that if the existing system of probate courts is to be retained, these courts should be clothed with authority to construe wills, at least concurrently with courts of chancery.

In New York the surrogate's court has jurisdiction to determine the validity, construction, or effect of any distribution of property contained in any will, whenever a special proceeding is brought for that purpose, or whenever it is necessary to make such determination as to any will in a proceeding pending before the court, or whenever any party to a proceeding for the probate of any will who is interested thereunder demands such determination in such proceeding.⁷⁵

(c) Trials *de novo*. Under the present statute appeals from the probate court and from the county court in probate matters go, in most cases, to the circuit court, where a trial *de novo* is had. In the

⁷³ Laws of New York, 1914, Chap. 443.

⁷⁴ Revised Laws of Massachusetts, 1902, Ch. 162, Sec. 5, p. 1423.

⁷⁵ Laws of New York, 1914, Chap. 443.

down state circuits such trials de novo are comparatively few. In Cook County, however, there were a sufficient number of appeals from the probate court in 1918 to occupy a large part of the judicial time of a circuit court judge during that year. In view of the specialization of the probate judge of Cook County in probate matters many lawyers regard a trial de novo in the circuit court as superfluous. In the down state counties, particularly in the smaller ones where the county judge receives such a small compensation that the more experienced members of the bar are not attracted to the office, a different situation is found. In these counties there is much to be said for the trial de novo in the circuit court.

The trial de novo in probate matters may, of course, be abolished absolutely by statute. If its total abolition is desired no constitutional change is necessary. If, however, it is desired to abolish the trial de novo in Cook County and permit it in other counties, the uniformity provision in the present constitution will cause trouble. Should a unified trial court be established, the difficulty of trials de novo will not arise.

City and county courts. If the present system of city courts is retained, it will be suggested that the jurisdiction of such courts be made co-extensive with the county. If the county court is to be retained, it will be suggested that it be given equitable jurisdiction.

Qualifications of judicial officers. It has been suggested that a new constitution require that masters in chancery, county judges, probate judges, and state's attorneys be members of the bar. In this connection it will be noted that the constitution contains no requirement as to the professional qualifications of any judicial officers. Circuit and supreme court judges need not have been admitted to the bar, and the supreme court has held⁷⁶ that the general assembly may not impose qualifications for office in addition to those now prescribed in the constitution.

Masters—court commissioners. It will be suggested that provision be made for some such officer as a master or court commissioner to perform on the common law side duties somewhat analogous to those of the master in chancery in the equity courts. Attention is called, particularly in Chicago, to the vast amount of time spent by judges in hearing motions, large numbers of which are uncontested. It has been urged that if some such officer be provided to relieve the judges of this mass of routine work, a great saving in judicial time could be effected.

Some such system is provided in a few states. In Arizona the judges of the trial court are empowered to appoint "such court commissioners in their respective counties as may be deemed necessary, who shall have such powers and perform such duties and receive such compensation as may be provided by law".⁷⁷ Statutes have specified the powers of these commissioners. Information from Arizona, however, tends to indicate that matters are presented to them so infre-

⁷⁶ *People v McCormick*, 261 Ill. 413 (1914).

⁷⁷ Constitution of Arizona, Art. VI, Sec. 19.

quently that their functions amount to little. It appears that they do not act at all when the judge is within the jurisdiction. Similarly in California it is provided that the legislature "may also provide for the appointment, by the several superior courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the superior courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law."⁷⁸ The system is not used to any extent in California. It is the policy to provide additional judges from time to time as the work requires, instead of using court commissioners.

In England masters are employed to hear motions and interlocutory applications. They save the judges an enormous amount of time.⁷⁹

In Illinois the establishment of a system of court commissioners is not dependent upon constitutional provisions. Much could be accomplished in this direction by statute.

Public defender. It will be suggested that the new constitution provide for an official to be known as the public defender, whose duties shall consist of defending criminals who have insufficient funds to procure competent counsel to defend them.⁸⁰

State's attorneys. The suggestion has been made that the machinery for the administration of justice in the state be consolidated in a single department, or under a single officer. To effect such a concentration it has been suggested that the state's attorney either be placed directly under the governor, who is responsible for the administration of justice, or that he be subjected to a more effective control of the attorney general than under the present system, and that the attorney general be made appointive by the governor.

It should be noted that under the present constitution state's attorneys may be removed from office only "on prosecution and final conviction for misdemeanor in office."

Uniformity of jurisdiction. The provision in the constitution of 1870 that all laws relating to courts shall be general and of uniform operation and that the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade shall be uniform, will cause difficulty if it is desired to create a unified court for Cook County and retain the present system of judicial organization downstate. It will also cause trouble in the future if consolidated jurisdiction is desired in other cities which may present problems similar to those now existing in Chicago and Cook County. This clause will also lead to difficulty should it be desired to abolish trials de novo and appeals from the probate court in Cook County and retain them in other counties. A similar situation will arise should it be desired to abolish justices of the peace in urban communities and retain them in the rural districts.

⁷⁸ California constitution, Art. VI, Sec. 14.

⁷⁹ See Leaming: A Philadelphia Lawyer in the London Courts, Chap. X.

⁸⁰ See Justice and The Poor, by Reginald Heber Smith. Carnegie Foundation for the Advancement of Teaching, Bull. No. 13, Chap. 15 (1919).

Coroners. The substitution of medical examiners for coroners will be suggested. At the present time the chief function of the coroner is to hold inquests on the bodies of persons who are supposed to have come to their death by violence or other undue means. The inquest is held in view of the body by a jury of six summoned by the coroner. The coroner's inquest has been held not to be a judicial proceeding.⁸¹ The Supreme Court of Illinois at first held it admissible in a civil case as evidence to show the cause of a person's death in this state but not as conclusive evidence. This view was later departed from by the holding of the supreme court that the findings of a coroner's jury cannot be admitted as evidence in workmen's compensation cases to prove the cause of death.⁸² At the last session of the general assembly it was enacted that the coroner's verdict should not be admissible as evidence to prove or establish any of the facts in controversy in any civil suit or proceeding to recover damages for injuries caused by the negligence of any person, firm or corporation resulting in the death of any person or for the collection of a policy of insurance.⁸³

Massachusetts and Maine both provide for the appointment by the governor of medical examiners in each county. In Maine they must be "able and discreet men, learned in the science of medicine and anatomy, and bona fide residents of the county for which they are appointed".⁸⁴ Massachusetts has similar requirements.⁸⁵ The duties of the medical examiners are similar to those of coroners in Illinois. Reports from Massachusetts speak very highly of the results obtained under the system. In Louisiana coroners are required by the constitution to have a medical or surgical education.⁸⁶ In New York City coroners are appointed by the governor.⁸⁷

In this connection it has been suggested that reference to coroners be omitted from the constitution in order that the general assembly may subsequently deal with the duties now performed by them in such manner as it may see fit.

Justices of the peace. Several suggestions have been made with respect to the justice of the peace system. Many lawyers in rural communities believe it works as well as any system which could be devised to take its place. Others are strong advocates of its abolition. Many feel that the jurisdiction of the justice of the peace is too high and should be reduced. This is, however, a statutory and not a constitutional matter. A few lawyers have suggested putting justices of the peace on a salary basis and electing only enough to handle the work of the community. Such a plan would probably work satisfactorily in urban communities, but would present greater difficulties in rural districts. It has also been suggested that the county courts take over the jurisdiction of the justices of the peace and police magis-

⁸¹ United States Life Insurance Co. v Vocke, 129 Ill. 557 (1889).

⁸² Peoria Cordage Co. v Industrial Board, 284 Ill. 90 (1918); Spiegel v Industrial Commission, 288 Ill. 422 (1919).

⁸³ Laws of Illinois, 1919, p. 294.

⁸⁴ Revised Statutes of Maine (1916), Ch. 141, Sec. 1, p. 1585.

⁸⁵ Revised Laws of Massachusetts (1902), Ch. 24, Sec. 1, p. 357.

⁸⁶ Constitution of Louisiana, Art. 121.

⁸⁷ N. Y. Laws, 1915, Ch. 284.

trates. Such a system would present difficulties, since it is impracticable to take all justice of the peace business from all parts of the county to the county seat. Another suggestion is that the circuit court appoint two or more masters or commissioners to be stationed in different parts of the county or to travel through it when necessary and dispose of this kind of business, such commissioners to be under the general supervision of the circuit court. Proposals for a unified court for Cook County contemplate the absorption by that court of the jurisdiction of the justices of the peace and police magistrates in the county outside of the city of Chicago.

If the present justice of the peace system is retained the suggestion has been made that in very petty matters the decision of the justice should be final without appeal to the county, circuit, or city court.

In Washington justices of the peace in incorporated cities or towns having more than 5,000 inhabitants have been placed on a salary basis. Reports from that state as to the operation of this system indicate that it works satisfactorily. A prominent Seattle lawyer writes: "It leaves the justice to be in fact a judge, without having to think about the fees he may realize out of the case, and I think it is generally preferred in this state to the fee system of charges."

In California justices of the peace have been placed on a salary basis in the larger communities. Reports from that state indicate that it works satisfactorily and is a great improvement over the fee system.

Suggestions covered in other chapters of this bulletin. Many proposals of changes in the judicial organization have been discussed in other parts of this bulletin. In the section on the jury and grand jury, the various proposals of changes in the jury and grand jury system have been discussed. In the chapter on the election and tenure of judges proposals with respect to methods of electing judges, methods of removal, methods of choosing chief justices of the various courts, and proposals for the temporary appointment of judges to fill vacancies, or to assist courts whose calendars are congested, have been discussed. The chapter upon the election and tenure of judges has also considered proposals for reapportionment of the supreme court election districts of the state of Illinois and the question of changing the boundaries of these districts. In the chapter on power to declare laws unconstitutional the proposals for advisory opinions and for the requirement of an extraordinary majority to declare laws unconstitutional have been treated. Claims against the state are not now handled by the courts in Illinois, but the problem involved in such claims is so closely related to the judicial function that it has been discussed in a separate chapter of this bulletin.

In Bulletin No. 14 will be found a discussion of the power of courts in injunction cases.

VI. ELECTION AND TENURE OF JUDGES.

In Illinois all judges are elected by popular vote. For the purpose of electing supreme court judges the state is divided into seven districts, and one judge is elected by the qualified voters of each district for a term of nine years. The state outside of Cook County is divided into seventeen circuits. Three circuit judges are elected by the qualified voters of each circuit for a term of six years. Twenty judges of the circuit and twenty of the superior court of Cook County are elected by the voters of that county for a term of six years. Judges of the municipal court of Chicago are elected by the voters of that city for a term of six years. Judges of the probate, county and city courts hold their office for a term of four years and are elected by the voters of their county or city. The supreme court assigns circuit court judges to duty in the appellate court for a term of three years. Three judges are assigned to each appellate court. In districts in which branch appellate courts are established three additional judges are assigned for each branch. At the present time there are two branches in the first appellate district. All judges are required to reside in the division, circuit, county or district from which they are elected. The election of the supreme and circuit judges is held on the first Monday in June. The election of county and probate judges takes place on the Tuesday next after the first Monday in November. Vacancies are filled by election if the unexpired term is over one year, but if they do not exceed a year the governor appoints.

Under the first constitution judges in Illinois were elected by a joint ballot of both houses of the general assembly and held their office during good behavior. This method proved to be unsatisfactory, and the popular election of judges was adopted by the constitution of 1848. Popular election of judges has caused little dissatisfaction outside of Chicago and Cook County. In Chicago and Cook County the large number of judges to be elected at each election makes it difficult for the voters to make an intelligent selection of judges.

There is some demand for the election of appellate court judges as independent judges and a longer term for some judges has been discussed. The supreme court election districts no longer give equality of representation to the different parts of the state. The present methods of filling vacancies have caused some difficulty.

In communities where few judges are elected the personal integrity of a judicial candidate can be easily ascertained by the electors. More difficulty is experienced in ascertaining his technical qualifications, as these are of such a nature that they are likely to be known to few outside of the members of the bar. In metropolitan districts, where many

judges are elected by a large electorate, the selection of competent judges by popular election is more difficult. The result in metropolitan districts is that many voters either do not exercise their right to vote, vote blindly, or rely upon the recommendation of others.

The bar associations have endeavored to furnish recommendations by holding bar association primaries. The results of these primaries are published. However, the influence of party leaders is great, and without their endorsement a candidate is seriously handicapped.

The Illinois problem. In Illinois outside of Cook County the voters of each county elect one county judge. The voters of each of the seventeen judicial circuits elect three circuit judges, and the voters of each of the seven supreme court election districts elect one supreme judge. In the nine counties having a population of over 70,000, the voters elect one probate judge. In twenty-six cities the voters elect one city judge; and in one city, East St. Louis, two city judges.

In Cook County the voters elect twenty superior court judges, twenty circuit court judges, one probate judge, one county judge, and vote for one supreme court judge. In addition to these, the voters of Chicago elect one chief justice of the municipal court and thirty associate judges. The supreme court judges and the circuit and the superior court judges are nominated by party conventions.¹

The following table shows the dates of judicial elections, and the judges to be elected in Illinois.

JUDICIAL ELECTIONS

(1) *Downstate.*

June, 1921.	1 Supreme Court Judge in 4th District. 3 Circuit Judges in each Circuit.
November, 1922.	1 County Judge in each county. 1 Probate Judge in Kane, La Salle, Madison, Peoria, Rock Island, Sangamon, St. Clair, Vermilion and Will counties.
June, 1924.	1 Supreme Court Judge in each of the 1st, 2nd, 3rd, 6th and 7th Districts.
November, 1926.	County and Probate judges.
June, 1927.	1 Supreme Court Judge in 5th District. 3 Circuit Judges in each circuit.

In 26 cities 1 city judge is elected every four years.

In East St. Louis two city judges are elected every four years.

(2) *Cook County and Chicago.*

April, 1919.	1 Superior Court judge.
November, 1920.	10. Municipal Court judges.
June, 1921.	20 Circuit judges and 1 Superior Court judge.

¹ People ex rel. Hoyne v Sweitzer. 266 Ill. 459 (1915). Laws of 1919, pp. 482-484.

June, 1922.	6 Superior Court judges.
November, 1922.	10 Municipal judges, 1 County and 1 Probate court judge.
November, 1923.	12 Superior court judges.
June, 1924.	1 Supreme court judge.
November, 1924.	1 Chief Justice, Municipal Court, and 10 Judges, Municipal Court.

The three circuit judges are elected in each circuit at the same time. This election is held on the first Monday of June each six years, after 1873.² The election of supreme court judges is also held on the first Monday of June, but is held each nine years after 1879 in the first, second, third, sixth and seventh districts; each nine years after 1876 in the fourth district, and each nine years after 1873 in the fifth district. In any given circuit elections for circuit judges and for supreme court judges will be held at the same time every eighteen years. There is no special date fixed by statute for the election of city judges, but they may not be elected at the time when city officers are elected.³ County and probate judges are elected at the general election, on the Tuesday after the first Monday in November.

The discussion here deals primarily with judges of courts of record, but it should be borne in mind that outside of Chicago justices of the peace and police magistrates are elected for four-year terms. Justices of the peace were abolished for the City of Chicago in 1905, but under the constitution of 1870 they were appointive so long as they existed. Each town in counties under township organization and each election precinct in counties not under township organization is authorized to elect two justices of the peace, and an additional justice of the peace (up to five) for every one thousand inhabitants in excess of two thousand. Justices are elected at the township election in counties under township organization. Police magistrates (with the same jurisdiction as justices of the peace) may be elected in all cities, villages and incorporated towns, and are chosen at city or village elections.

Situation outside of Cook County. At no election outside of Cook County are over four judges elected. All voters are called upon to vote for at least five judges, but no voter is called upon to vote for more than eight judges. The election of supreme and circuit judges takes place at a time when no other elections are held. The election of county and probate judges takes place when other officers are being elected, and they are chosen from an area which constitutes the principal unit for political party organization. They are, however, voted upon by a small electorate and the candidates are likely to be known to many of the voters.

² Hurd's Revised Statutes, Chap. 46, Sec. 12.

³ Hurd's Revised Statutes, Chap. 37, Sec. 244.

The Cook County situation. In Cook County a more difficult situation has developed. At the present time the electors in Chicago vote for candidates for seventy-four judgeships. Cook County electors outside of Chicago vote for candidates for forty-three judgeships, and in Chicago Heights an additional judgeship (the city judgeship) is added. At one election twenty-one judges are elected. The circuit court judges and seven of the superior court judges are elected at separate judicial elections. Thirteen superior court judges and the municipal court judges are elected at the November elections.

The problem of choosing judges in Cook County is, therefore, different from that for the rest of the state, and the election of judges has not worked as well as in the other counties.

Cook County is recognized as a separate judicial unit by the constitution of 1870. If a different method of selecting judges is thought to be desirable for this county or for Chicago, it could be provided without discarding the present method in the rest of the state.

Methods of selecting judges. There are three methods of selecting judges in the United States.

In thirty-eight states judges of the highest court are elected by the people. In all of these states except one the trial judges are chosen in the same manner. In Florida the trial judges are appointed by the governor although the judges of the supreme court are elected.

In four states (Rhode Island, Virginia, South Carolina and Vermont) the judges are elected by the legislature, and in one (Connecticut), they are appointed by the legislature upon nomination of the governor.

In five states the highest judges are appointed by the governor subject to confirmation, by the governor's council in Maine, Massachusetts and New Hampshire, and by the senate in Delaware and New Jersey. The United States judges are appointed by the President and confirmed by the Senate.

The objections to the popular election of judges have been summed up as follows:⁴

"We must conclude, then, that an intelligent choice of a judge in the first instance, by a large electorate is a practical impossibility, because the proper qualifications for a judge like those for a doctor or an engineer or a teacher are so technical and personal that very few of the electorate are able to form an intelligent opinion of the merits of a candidate; nor can judges be selected largely on the basis of their attitude toward certain political policies as may legislative and executive officers, for nearly all of the duties judges are called upon to perform can only be properly and impartially discharged by a rigorous ignoring of all such conditions.

"What popular elections give us, at best, is an appointment by party leaders, or a popular choice between such appointments; and at

⁴ The Selection, Tenure and Retirement of Judges, James Parker Hall. Address before Ohio State Bar Association, December, 1915, American Judicature Society Bulletin X, p. 12.

worst they give us a clever personal advertiser or a sheer accident—the latter being somewhat likely to happen in districts of relatively low intelligence with a direct primary and a nonpartisan ballot.”

Election by the general assembly was adopted in Illinois by the constitution of 1818. It was discarded in 1848 in favor of the present system, and there seems to be no desire to go back to the old method. It is said that in Vermont and Rhode Island the judges are almost wholly chosen from among members of the legislature itself.⁵

In Illinois the abuse of power by the general assembly was one of the causes for discarding the legislative method of selecting judges. In 1841 the controlling political party in the general assembly believed that the supreme court would make a decision inimical to its interests. In order to prevent this, the general assembly increased the number of judges in the supreme court from four to nine. The new judges appointed by the general assembly were from the political party that was in control of the general assembly.⁶

It should be noted, however, that the power of appointment was here coupled with a power in the general assembly to increase the number of members of the supreme court.

The advantages of appointment by the executive system are summed up as follows by James Parker Hall in an address before the Ohio State Bar Association in 1915: “The system has certain advantages over either of the elective ones discussed. A single executive can ascertain the fitness of candidates for judgeships incomparably better than the electorate, if he has the will to do so. He can doubtless do this better than can a body as large as the ordinary legislature, granted equally good purposes on the part of both. He is perhaps under less political temptation than are the members of the legislature to trade his judicial appointments for other favors, for he alone can come to a decision about an appointment, while it requires a majority or a plurality of the legislature to elect, and a deadlock may be broken only by a compromise. Most important of all, the responsibility for the appointment is fixed upon a conspicuous official, and in a community where political public influence is educated and sensitive it can influence such an official as it never can the relatively irresponsible members of a somewhat numerous legislative body . . .

“Of all methods of selecting judges of which we have actually had considerable experience in this country, that of appointment by the executive has unquestionably produced the ablest and most satisfactory courts. Of the six states now pursuing this method of choice, the testimony in Massachusetts, New Jersey and Delaware is practically unanimous that the judges are usually admirably fitted to their tasks, and enjoy to the highest degree public and professional confidence in their ability and impartiality.”

This statement is, of course, one in support of executive appointment and does not call attention to other factors which may explain the favorable judicial situation in states having executive appoint-

⁵ James Parker Hall, *The Selection, Tenure and Retirement of Judges*, Bulletin X. American Judicature Society, p. 13.

⁶ Anthony, *Constitutional History of Illinois*, p. 132.

ments. Dean Hall's article lays too much emphasis upon the purely technical qualifications. Executive appointment is by no means sure to cause the disappearance of the defects in our judicial system.

Proposals were made in the Massachusetts constitutional convention of 1917 both for the election of judges and for shorter terms. These proposals were both rejected but will be found discussed in the debates of that convention.

Many suggestions have been made in seeking some modification of the present systems. Some of these plans could be put into operation without a constitutional provision.

It has been urged that the best judges are found where the lawyers have the most influence in selecting judges.⁷ The lawyers doubtless have better opportunities to learn of the qualifications of the judicial candidates, and may be more capable of selecting judges than the voter who seldom comes in contact with the courts. Many bar associations recommend candidates and such recommendations in some cases (as in Wisconsin) have decisive weight in the elections. It has been suggested that lawyers or bar associations be given the privilege to nominate candidates.

In New York an attempt was made to allow the governor to certify names of judicial candidates to be placed upon the ballot. Under this plan the names were to appear under the heading: "Recommended by the Governor".

A more radical proposal has been endorsed by the American Judicature Society, with especial reference to the situation in metropolitan communities, where a large number of judges is necessary. Its proposal is that the people shall elect a chief justice for a short term, and that he shall appoint the other judges for life, unless at elections held at certain intervals the people vote to retire these judges. The proposed plan requires that three years after a judge is appointed his name shall go on the judicial ballot with the question: Shall he be retired or retained? Again six years later the same question is asked, and again nine years later. This method centers the responsibility for the selection of judges in one person who is responsible for the work of the court. However, a chief justice who had a number of judges to appoint would likely be subjected to much political pressure, although the electorate would retain a degree of control over the appointees by being permitted to vote on their continuance in office.

This method of selecting judges is similar in some respects to the method followed in New Jersey in the selection of vice-chancellors. In New Jersey the chancellor is appointed by the governor. The chancellor is given power to appoint vice-chancellors, seven in number. The results in New Jersey appear to have been good.⁸ The Lord Chancellor in England, who is the head of the judicial system, has large powers in the selection of justices.

A plan suggested by Judge Hiram T. Gilbert adopted some of the elements of the American Judicature Society proposal. Judge Gilbert

⁷ Preliminary Report on the Efficiency in the Administration of Justice. The National Economic League.

⁸ James Parker Hall. The Selection, Tenure and Retirement of Judges. Bulletin X. American Judicature Society, p. 30.

proposes that Cook County judges shall be appointed by the governor to serve until death, resignation, retirement or removal. At six-year intervals he proposes that an election be held to express approval or disapproval of the judges then in office, and if a judge is disapproved his office is to become vacant.⁹

In California the proposal has been made for a non-partisan court commission whose members should serve for twelve years, this commission to have authority to appoint all judges, with the advice and consent of the senate, and power also to hear and determine all charges against judicial officers.

The method of choosing a chief justice is important as bearing upon the permanence of judicial policy. The chief justice of the United States Supreme Court is appointed as such. The constitution of Illinois provides that "the judges shall choose one of their number chief justice", and the court has adopted the practice of each judge in turn serving for one year. For the circuit and superior courts of Cook County, the constitution prescribes that "the judge having the shortest unexpired term shall be chief justice of the court of which he is a judge. In case there are two or more whose terms expire at the same time, it may be determined by lot which shall be chief justice". Under the statute creating the municipal court in Chicago the chief justice is separately elected as such, and is given large authority in the control of the court's business. In a number of states chief justices of the supreme court serve in rotation for short periods of time as in Illinois. In a few states he is elected to the position of chief justice.¹⁰ In Delaware, the chief justice is appointed as such, and in Maryland he is appointed from the members of the court by the governor, with the consent of the senate. Of course, a limited tenure of judges prevents the choice of a chief justice to serve for a long period. Under the plan proposed by Judge Gilbert, the supreme court is to appoint a chief justice of the Cook County court.

Methods of electing judges of the supreme court. There are three methods of voting for judges of the highest court in the states where these judges are elected by a popular vote.

In one group of states,¹¹ the state is divided into districts, and the voters of each district elect one or more judges to the highest court. This is the method used in Illinois. In another group of states,¹² the state is divided into districts, and one judge is elected from each district by the voters of the state at large. In a third group of states the judges of the highest court are elected from the state at large by the voters of the entire state.¹³

⁹ A proposed judiciary article for the constitution of 1920, with explanatory notes. By Hiram T. Gilbert.

¹⁰ Arkansas, California, Minnesota, Montana, Nebraska, New York.

¹¹ Illinois, Mississippi, Louisiana.

¹² Oklahoma, Indiana, Kentucky, South Dakota.

¹³ Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Washington, West Virginia, Wyoming.



Supreme Court
Election Districts
of Illinois



Election by districts tends to obtain the representation of both leading political parties in the highest court. Where the judges are elected by the voters of the state at large the court is likely to be composed of members of the same political party.

The purpose of electing judges of the highest court from districts is to give each section of the state representation. In Illinois, the present election districts do not give equality of representation. The following table shows the population of the Illinois districts according to the census of 1910:

First	605,250
Second	565,573
Third	631,746
Fourth	402,040
Fifth	400,263
Sixth	414,873
Seventh	2,618,846
	5,638,591

The general assembly has power to change the boundaries of the districts under certain restrictions, but have made no changes since 1903. In 1903 the boundaries of the fourth district were changed, and incidentally the boundaries of the second, fifth and sixth districts.¹⁴

The constitution provides that: "The boundaries of the districts may be changed at the session of the general assembly next preceding the election for judges therein, and at no other time; but whenever such alterations shall be made the same shall be upon the rule of equality of population, as nearly as county boundaries will allow, and the districts shall be composed of contiguous counties, in as nearly compact form as circumstances will permit".

The elections of the judges of the supreme court do not take place at the same time, and in changing the boundaries of one district the boundaries of others must also be changed. It was held in *People v Rose*, 203 Illinois, 46 (1903) that the general assembly could change the boundaries of one district at the session next preceding the election of the judge in that district, although in making the change, the boundaries of other districts were also incidentally changed.

The constitution provides that "the alterations shall be made upon the rule of equality, as nearly as county boundaries will allow". This provision has not been construed by the courts. If it means that a portion of a county can not be formed into a district, and that a district must be composed of one or more whole counties, Cook County cannot without constitutional change be given proportionate representation upon the supreme court since its population according to the census of 1910 was 2,405,233 and the population of the state was 5,638,591. This county would be entitled to three of the seven judges in the supreme court, if apportionment were to be based purely on population.

¹⁴ Hurd's Revised Statutes, Chap. 37, Sec. 1a and 1b.

Tenure. The tenure of judges in Illinois varies in the different courts. Justices of the peace and the probate, county and city judges hold their offices for a term of four years. The municipal court judges of Chicago, the superior court judges and the circuit court judges for a term of six years, and the supreme court judges for a term of nine years. There has been some agitation for a longer term for the supreme court judges and for a uniform tenure for the trial judges.

In other states where the judges are elected by the people the terms of the highest judges range from four to twenty-one years. The longest terms are in Pennsylvania—twenty-one years; Maryland, fifteen years; New York, fourteen years; California, Louisiana and West Virginia, twelve years, and Missouri and Wisconsin ten years. In seventeen states the term is six years.¹⁵ In most of these states the trial judges are chosen for shorter terms.

In the four states where the highest judges are elected by the legislature, the term is for life in Rhode Island, twelve years in Virginia, ten years in South Carolina and two years in Vermont. In Illinois before 1848 the judges were appointed by the legislature during good behavior.

In Massachusetts and New Hampshire the highest judges are appointed for life; in Delaware for twelve years; in Connecticut for eight years, in Maine for seven years, and in New Jersey for six years. The United States judges are appointed for life.

The advocates of long terms for judges contend that such tenures tend to make judges more impartial, as it removes them from the necessity of seeking re-election; that it tends to produce a stronger bench as it gives the judges greater opportunity to learn the judicial duties and to gain experience. It is also contended that the frequent elections are an unwarranted expense; and that a short tenure limits the available material for judicial officers, as many of the best qualified lawyers will not give up their practice for an uncertain tenure.

On the other hand the opponents of long terms believe that a secure tenure tends towards arbitrariness and ill-treatment of lawyers and litigants by the judges, and takes away the motive of judges to give their best efforts to their work.

Removal of judges. In Illinois judges may be removed by impeachment or by the general assembly. Section 30 of Article VI of the constitution provides: "The general assembly may, for cause entered on the journals, upon due notice and opportunity for defense, remove from office any judge, upon concurrence of three-fourths of all members elected."

Neither method offers an easy means of removing an incompetent or corrupt judge. With short tenures and popular elections, the electors are afforded a way of retiring unsatisfactory judges. If the

¹⁵ Alabama, Arizona, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Texas, Washington.

tenure or method of selecting judges is changed, other methods of removing judges may be desirable.

In some of the states, judges may be removed only by impeachment, although a number of states have constitutional provisions for removing judges for cause, by the legislature, or by the governor upon address by the legislature. Usually a concurrence of two-thirds of the members elected or two-thirds of each house is necessary.

In the states which permit removal of judges by other proceedings than impeachment the constitutions of Illinois, Kansas, Nevada, New York, North Carolina, Ohio, Tennessee, Utah, Virginia, West Virginia, Washington and Missouri, provide for their removal by the legislature, while the constitutions of Arkansas, Connecticut, Kentucky, Massachusetts, Texas, Wisconsin, Maryland, Michigan and Pennsylvania provide that judges may be removed by the governor upon the address of the legislature. In Massachusetts and Virginia, extraordinary majorities are not required for this purpose. Two-thirds of the members elected or two-thirds of each house must concur in all of the other states except Washington and Illinois. In these states three-fourths of the members elected to each house must concur. Until the constitution of 1870, a two-thirds majority was specified in Illinois.

In a few states the causes for which judges may be removed by legislative action are specified. The constitutions of Nevada, Michigan, Mississippi and Pennsylvania provide that judges may be removed for cause, not sufficient for impeachment. In North Carolina the only causes for which the legislature may remove is mental or physical disability. In West Virginia "age, disease, mental or bodily infirmity or intemperance" making them incapable of discharging their duties are specified. In Missouri, inability to discharge duties with efficiency by reason of continued sickness or physical or mental disability are the only causes specified. In Washington "incompetency, corruption, malfeasance or delinquency in office or other sufficient cause" is required. In Louisiana "high crimes and misdemeanors, non-feasance or malfeasance in office, incompetency, corruption, favoritism, extortion or oppression in office, gross misconduct or habitual drunkenness" are the causes. In Texas "wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause not sufficient for impeachment."

In Indiana the constitution provides that "any judge who shall have been convicted of corruption or other high crime may, on information in the name of the state be removed from office by the supreme court or in such other manner as may be prescribed by law". The Illinois constitution provides that all officers mentioned in the judicial article, other than judges "shall be removed from office on prosecution and final conviction for misdemeanor in office".

In Massachusetts a constitutional amendment was adopted in 1918, which provides that the governor, with consent of the council, may after due notice and hearing retire judges because of advanced age or mental or physical disability.

The subject of removal will be found discussed in bulletins dealing with the legislative and executive departments. The discussion here is

limited to the removal of judges although attention should be directed to the fact that in Illinois state's attorneys (who are dealt with in the judicial article of the constitution) are removable only on conviction for misdemeanor in office, although their official position gives them control of the machinery for the prosecution of offenses. The constitution applies the same method of removal to other officers than judges who are provided for in the judicial article, and justices of the peace are probably so removable;¹⁶ they are not styled judges by the constitution. Justices of the peace for Chicago before their abolition in 1905 under authority of the constitutional amendment of 1904, were by express constitutional provision subject to removal "by summary proceeding in the circuit or superior court, for extortion or other malfeasance".

Certainly the methods of removing judges are too cumbersome if justices of the peace are included under this designation, and even as to judges of courts of record impeachment or removal by three-fourths of all members elected to each house are unlikely to be employed in other than exceptional cases. Only one impeachment of a judge has been attempted in Illinois (that of Judge Theophilus W. Smith of the supreme court in 1833), and in that case an acquittal resulted, although a majority of the senators were for conviction. In no case has a judge been removed by action of the two houses. In Massachusetts there have been removals both by impeachment and by address of the two houses.¹⁷

Retirement. Connecticut, New Hampshire, New York, Maryland and Louisiana have constitutional provisions relating to the retirement of judges on account of age. In Connecticut and New Hampshire a judge is ineligible to serve after he reaches the age of seventy. In New York a judge must retire on the last day of December after reaching the age of seventy, and in Maryland, a judge must retire at seventy unless the legislature sees fit to continue him for the rest of his term. In 1910 a constitutional amendment was adopted in Louisiana by which judges of the superior court who have served for fifteen years may retire on full pay upon reaching the age of seventy-five. In 1918 an amendment in the same state permits district judges to retire on full pay upon reaching the age of seventy-five, provided they have served twenty-five years.

The Illinois general assembly passed an act in 1919 providing that judges of the supreme, circuit, superior, probate, county, city or municipal courts who have reached the age of sixty-five and have served twenty-four years in any one or more of such courts, may upon retirement receive an annual pension equal to one-half the annual compensation received during their last year of service.

¹⁶ The attorney general has taken this view. Report and Opinions of the Attorney General, 1914, p. 1201.

¹⁷ For a full review of this subject, see Massachusetts Constitutional Convention Bulletin No. 36. The removal of judges in Massachusetts, 1917.

Vacancies. Article VI, Section 32, of the constitution provides that vacancies of officers provided for in the judicial article of the constitution shall be filled by election; but where the unexpired term does not exceed one year, vacancies of judges shall be filled by appointment of the governor.

The statutes provide that when a vacancy shall occur in the office of judge of the supreme court, judge of the circuit court or judge of the county court, the clerk of the court in which the vacancy exists shall notify the governor of such vacancy. If the vacancy occurs within one year before the expiration of the term of office made vacant, the governor fills such vacancy by appointment; but if the unexpired term exceeds one year, the governor issues a writ of election as in other cases of vacancies to be filled by election.¹⁸

In order to reduce the expense of special elections, it is usual to call these elections at a time when other elections are being held. This often causes a vacancy to exist for some time before it is filled. In the city, county, probate, circuit or superior courts the inconvenience caused by a vacancy may be obviated by calling other judges to hold court in the city, county or circuit where the vacancy exists, as the statutes provide for the exchange of county judges with each other and with probate judges,¹⁹ and the exchange of city and circuit judges,²⁰ and for the assigning of circuit judges to other circuits.²¹ There is no provision, however, for assigning other judges to assist in the supreme court.

In other states where judges are elected, it is common for the constitution to prescribe that vacancies in the highest court shall be filled by appointment by the governor until a successor is elected and qualified. Many of the constitutions also specify when the successor shall be elected. In Arizona, California, Colorado, Georgia, New Mexico, North Dakota, Oklahoma, Washington and South Dakota, the constitutions provide that the vacancy shall be filled by the governor until the successor shall be elected and shall qualify, and that the successor shall be elected at the next general election. In other states in which the governor appoints until the successor is elected, it is provided that the successor shall be elected at the first general election occurring more than thirty days after the vacancy (Nebraska) and more than six months (Alabama). If the unexpired term does not exceed one year in Illinois, the governor may appoint for such term; in Arkansas the governor can appoint for the full unexpired term if it is not more than nine months, and in West Virginia, if it is not more than two years.

Additional judges, temporary vacancies and ad litem appointments. In case a judge of the city, county, probate, circuit, or superior court is incapacitated or for any reason is unable to sit, another judge may be called in to sit for him, as the statute allows inter-

¹⁸ Hurd's Revised Statutes, Chap. 46, sec. 131.

¹⁹ Hurd's Revised Statutes, Chap. 37, Secs. 215a, 239a.

²⁰ Hurd's Revised Statutes, Chap. 37, Sec. 245.

²¹ Hurd's Revised Statutes, Chap. 37, Sec. 82i.

change of county judges with each other and with probate judges, the interchange of city and circuit judges, and the assignment of circuit judges to other circuits. These provisions permit circuit judges to be called to another circuit to assist when a court gets behind with its work. An Act of 1911 provided that the supreme court might appoint three lawyers in any appellate district to assist the appellate judges in that district, but the operation of the act was limited to a two-year period and no action was taken under it. No provision is made in Illinois for calling judges to assist in the supreme court, when one of the supreme court judges is incapacitated or when the court is unable to keep up with its work.

The increased litigation in this state, has caused measures to be taken at various times to relieve the supreme court of some of its work. The constitution of 1870 increased the number of supreme court judges from three to seven, and permitted the general assembly to create appellate courts. In 1877 appellate courts were created. In 1909 a statute was passed making decisions of the appellate court final in many cases in which, before this time, an appeal could be taken to the supreme court. As litigation increases, other measures to relieve the supreme court of some of its work will probably be necessary. Under these conditions it may be desirable to provide for calling other judges to assist when the court falls behind in its work.

The New York constitution provides that: "Whenever and as often as a majority of the judges of the Court of Appeals shall certify to the governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate not more than four justices of the supreme court to serve as associate judges of Court of Appeals".

Two states, Virginia and Ohio, have constitutional provisions permitting a special court to be called. The Virginia provision permits the general assembly to provide from time to time for a special court to try cases on the supreme court docket which the court cannot dispose of with convenient dispatch, or in which the majority of the judges of the supreme court are so situated that it is improper for them to sit. This court must be composed of not less than three or more than five judges of the circuit or city courts, or of judges of the circuit or city courts, together with one or more judges of the supreme court. A satisfactory use of this provision was made under the Virginia constitution of 1869.

In Ohio the general assembly may on application of the supreme court provide for the appointment of a commission of five members to dispose of such part of the supreme court docket as may be assigned to it. These commissioners are appointed by the governor with the advice and consent of the senate. The term of the commissioners cannot exceed two years, and this commission cannot be created oftener than once in ten years.

Constitutional provisions are made in several states for the appointment ad litem of judges in the highest court in case of inability of one or more of the judges of such court to sit. In Georgia, Ar-

kansas, Delaware, Rhode Island, Tennessee, Texas, Kentucky, and Minnesota, this appointment is made by the governor. In Arizona, California, Louisiana, Idaho, Montana, New Mexico, North Dakota and Vermont, the appointment is made by the remainedr of the court.

The appointment is required to be from judges of the general trial court in Georgia, Arizona, Idaho, New Mexico, Montana, North Dakota and Vermont; from the judges of intermediate court of appeals in California, and from the judges of the intermediate court of appeals or the judges of the general trial courts in Louisiana. In Missouri and Mississippi, the parties themselves may make the appointment, but in case the parties cannot agree, the court appoints the judge *ad litem* in Missouri and the governor in Mississippi.

The statements made above relate to appointments in the highest state courts. A number of states also have constitutional provisions regarding the appointment of judges *ad litem* or *pro tempore* for the trial of particular cases. Some provide that the parties may agree upon an attorney at law for the purpose.²² Several provide for another method of choice if the parties cannot agree,²³ and in Oklahoma in case the judge is disqualified and the parties cannot agree, a judge *pro tempore* is elected by the members of the bar present, at the request of either party. Under statutes in Indiana and Louisiana, the regular judge may in certain cases designate a lawyer to serve, and in South Carolina the governor may commission a lawyer for the purpose.²⁴ Kentucky also has a statute permitting parties in certain cases to agree upon an attorney to hold court. Letters received from a number of states indicate that little use is made of provisions for *ad litem* trial judges.

²² California, Florida, Idaho, Montana, New Mexico, Utah, Washington.

²³ Alabama, Mississippi, Texas.

²⁴ The Tennessee constitution also authorizes a similar plan.

VII. INDICTMENT AND INFORMATION.

Constitutional and statutory provisions in Illinois. The constitution of 1818 (Art. VIII., Sec. 10) provided that "no person shall for any indictable offense be proceeded against criminally, by information, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, by leave of the courts for oppression or misdemeanor in office."

The constitution of 1848 (Art. XIII., Sec. 10) provided "no person shall be held to answer for a criminal offense unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or navy, or in the militia, when in actual service in time of war or public danger; provided, that justices of the peace shall try no person, except as a court of inquiry for any offense punishable with imprisonment or death, or fine above \$100.

The proposed constitution of 1862 contained the following provision: (Art. II, Sec. 11) "That all offenses, less than felony, and in which the punishment is by fine or imprisonment otherwise than in the penitentiary shall be tried summarily before a court authorized by law to try the same, upon information under oath, without presentment or indictment of a grand jury, saving to the defendant in all cases the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentment or indictment of a grand jury, except in cases of impeachment, or in cases arising in the army or navy or in the militia when in actual service, in time of war or public danger."

In the constitutional convention of 1869-70, an attempt was made to abolish the grand jury by providing that no grand jury should be appointed or empaneled in the circuit court, but that offenses should be prosecuted in such manner as might be provided by law.¹ The attempt failed but the constitution of 1870 provides that the grand jury may be abolished by law in all cases.

Art. II., Section 8, of the constitution of 1870 provides: "No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment otherwise than in the penitentiary, in cases arising in the army and navy, or in the militia when in time of war or public danger; Provided, that the grand jury may be abolished by law in all cases."

The constitution of 1870 has not exercised its power to abolish the grand jury, and its presentment by a grand jury is therefore necessary

is found in the constitutions of Missouri, Oklahoma, Arizona, Montana, Idaho and Utah. The Utah constitution provides "no grand jury shall be drawn or summoned unless in the opinion of the judge of the district, public interest demands it." The Arizona constitution provides; "Grand juries shall be drawn and summoned only by order of the superior court." The constitutional provision relating to convening of grand juries in Missouri, Montana and Idaho are similar to those in Utah and Arizona. The constitution of Oklahoma provides that the grand jury shall be convened by the judge upon his motion, or shall be ordered by the judge upon the filing of a petition signed by 100 resident tax payers of the county. Michigan, Kansas, Washington, California and South Dakota have constitutional or statutory provisions which permit an infrequent use of the grand jury.

Conclusions. The machinery in Illinois for committing accused persons and bringing them to trial is cumbersome. The work of committing magistrates is not closely co-ordinated with the processes of indictment and information, although preservation of evidence before the committing magistrate is definitely provided for before the municipal court.²⁹ The coroner's inquest, although once an important element in bringing certain types of offenders to justice, has practically ceased to perform this service.

There has been a definite tendency in other states to reduce the use of the grand jury; although an exception to this statement should be made with respect to Oregon, where a constitutional amendment of 1908 substituted indictments for informations. Attention should also be called to the fact that in Illinois informations are not used for all offenses punishable by fine or imprisonment otherwise than in the penitentiary, although this is constitutionally permissible. Where the grand jury is retained for regular use, there has been a tendency to reduce its size.

Although constitutional changes in a number of other states have rendered the use of the grand jury less frequent, there has been little tendency to abolish the grand jury altogether. While information has been regarded as sufficient for ordinary use, it had been thought that a grand jury may be worth while as an occasional instrument to meet emergencies or to proceed where the prosecuting officer does not or will not act. An option, such as that which exists under the constitution of Illinois, to abolish the grand jury "in all cases," probably would not have been taken advantage of in the states which have restricted the use of grand juries.

Letters were written to a number of the states which retain the grand jury, but use informations for ordinary purposes, and replies were received from Arizona, California, Idaho, Michigan, Montana, Nevada, South Dakota, Utah and Washington. In Michigan there is no grand jury except where ordered by the circuit court, and apparently there are not more than a half dozen grand juries called in the state

²⁹ Hurd's Revised Statutes, Chap. 37, Sec. 313c.

during the course of a year. The information system is said to work satisfactorily, and grand juries when called are apparently not regarded as of great use.

The letters from all the other states just enumerated, agree in substance with the statement from Michigan, all of these states having about the same plan for calling a grand jury. The grand jury is regarded as important and is occasionally used in these states in "graft" prosecutions, in cases affecting public officers, and upon other exceptional occasions. In Seattle, Washington, it has become customary to have a grand jury once a year; but in smaller counties of the states, here under discussion, a grand jury is infrequent. A former district judge of Idaho reported that two grand juries were used during his twelve years of service. From Arizona a statement was received that the grand jury is infrequently used, although the correspondent expressed a personal preference for the grand jury.

If constitutional changes are made as to the use of the grand jury, it is assumed that the matter will not be dealt with in detail by the constitution. Committing magistrates and coroners are now covered by statute, and it is not necessary that they be regulated by the constitution.

VIII. TRIAL BY JURY.

Constitutional and statutory provisions. The right of a trial by jury is guaranteed by the constitution of 1870, both in criminal and civil cases.

Section 5 of Article II of the constitution provides: "The right of trial by jury as heretofore enjoyed shall remain inviolate; but the trial of civil cases before justices of the peace by a jury of less than twelve men may be authorized by law."

Section 9 of the same article provides: "In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

The constitutional guaranty extends only to civil cases at common law and to criminal cases. It does not extend to chancery¹ or probate² cases, or to special summary jurisdictions unknown to the common law.³ It does not require a jury for original proceedings in the supreme court upon application for mandamus because jury trial had never been provided for in the supreme court.⁴ The guaranty "extends only to the question of the guilt or innocence of the defendant and does not extend to the question of the punishment that may be inflicted by the court after a verdict of guilty".⁵ However, the determination of the punishment is in some cases given by statute to the jury in criminal cases.⁶

This guarantee is not infringed by a statute which provides that a new kind of a case shall be tried in a court of equity, if such action is of an equitable nature, but the right to trial by jury cannot be defeated by merely declaring that certain kinds of cases shall be tried in a court of equity.⁷

Statutes provide that a jury may be had in a number of cases where it may not be constitutionally demanded, as in divorce cases;⁸ the assessment of damages for refusal to assign dower;⁹ proceedings

¹ *Turnes v Brenckle*, 249 Ill. 394 (1911).

² *Moody v Found*, 203 Ill. 78 (1904).

³ See *People v Hill*, 163 Ill. 186 (1896), p. 194. For contempts, see *People v Seymour*, 272 Ill. 295 (1916) and *People v Smith*, 275 Ill. 256 (1917).

⁴ *People v Mayor of Alton*, 233 Ill. 542 (1908).

⁵ *People v Heise*, 257 Ill. 443 (1913), p. 450.

⁶ *Hurd's Revised Statutes*, Chap. 38, Secs. 444-447, 498, 499.

⁷ *Ward v Farwell*, 97 Ill. 593 (1881). See also *People v Smith*, 275 Ill. 256 (1917).

⁸ *Hurd's Revised Statutes*, Chap. 40, Sec. 7.

⁹ *Hurd's Revised Statutes*, Chap. 41, Sec. 33.

under the insolvent debtors act;¹⁰ contests of wills;¹¹ and in proceedings to determine insanity.¹² In chancery cases the court may in its discretion direct issues to be tried by a jury.¹³ So-called juries are also provided by statutes for coroner's inquests¹⁴ and inquests of lunacy.¹⁵

At common law a jury consisted of twelve men. In cases where a jury is guaranteed this number must be had, except in cases tried before justices of the peace. In civil cases before justices of the peace, the general assembly, under the authority granted by the constitution, has provided that the jury shall consist of six or such other number of jurors not to exceed twelve that either party may demand.¹⁶

The constitution by Section 13 of Article II and Section 14 of Article XI provides that compensation for property taken or damaged for public use shall be ascertained by a jury. These sections guarantee only the type of jury provided for elsewhere in the constitution and permit a jury of less than twelve when the proceedings are before a justice of the peace.¹⁷ Statutes have been enacted providing that six shall constitute a jury before justices of the peace in proceedings to assess damages where the highway commissioners are unable to agree with the owners with respect to the damages caused by opening, widening or altering a road,¹⁸ and to assess damages where the farm drainage commissioners are unable to procure the right of way for drains by agreement.¹⁹

In civil cases at common law the jury may be waived or the parties may proceed to trial with less than twelve jurors.²⁰ In criminal cases which can only be prosecuted upon indictment, a jury of twelve men is necessary in order to confer jurisdiction upon the court, and unless the defendant pleads guilty the jury cannot be waived, nor can the trial proceed with less than twelve jurors.²¹

In distinguishing earlier cases, the court said: "In the cases cited in which it was held in this court that criminal accusations might be lawfully prosecuted without the intervention of a jury, the offenses were such as might be prosecuted otherwise than by indictment by grand jury."

At common law the findings of fact by a jury were conclusive and could not be reviewed by a court of appeal. The practice in Illinois has, however, been different since 1837, and the appellate court is authorized by statute to review the facts and reverse without remanding, where it finds the facts different from the trial court.²² The statute further provides that if a finding of fact by an appellate court in other than a chancery case is different from the finding of the trial court, the

¹⁰ Hurd's Revised Statutes, Chap. 72, Sec. 5.

¹¹ *Lyman v Kaul*, 275 Ill. 11 (1916).

¹² Hurd's Revised Statutes, Chap. 85, Sec. 3.

¹³ Hurd's Revised Statutes, Chap. 22, Sec. 40.

¹⁴ Hurd's Revised Statutes, Chap. 31, Sec. 10.

¹⁵ Hurd's Revised Statutes, Chap. 85, Sec. 7.

¹⁶ Hurd's Revised Statutes, Chap. 79, Sec. 48.

¹⁷ *McManus v McDonough*, 107 Ill. 95 (1883).

¹⁸ Hurd's Revised Statutes, Chap. 121, Secs. 82, 85.

¹⁹ Hurd's Revised Statutes, Chap. 42, Sec. 93.

²⁰ *Rehm v Halverson*, 197 Ill. 378 (1902).

²¹ *Paulsen v People*, 195 Ill. 507 (1902).

²² Hurd's Revised Statutes, Chap. 110, Sec. 120. See *Borg v C. R. I. & P. Ry. Co.*, 162 Ill. 348 (1896).

appellate court shall recite the facts as found, and the judgment of the appellate court shall be final and conclusive as to all matters of fact in the controversy. The statute expressly provides that the supreme court shall re-examine cases brought from the appellate court as to questions of law only.²³ A statute was held unconstitutional which provided that where a case was reversed upon a finding of fact different from the findings of the trial court, the supreme court could examine both as to law and fact, on the ground that it discriminated between the parties in allowing the appellee to have the facts reviewed, if the facts reviewed in the judgment of the appellate court was against him, whereas the appellant had no such right if he were defeated.²⁴

A unanimous verdict in both civil and criminal cases, is a common law requirement, and protected by the constitutional guarantee.

In criminal cases a jury is given as a matter of right in all courts. In civil cases at common law a jury is granted without a demand or payment of fee in all courts, except the municipal court of Chicago and before justices of the peace. The statutes require that in the municipal court of Chicago no jury shall be had in civil cases unless the plaintiff at the time of filing his affidavit of claims or the defendant at the time of filing his affidavit of merits makes a demand and pays a fee of six dollars.²⁵ The party demanding a jury trial before a justice of the peace must first pay the fees of the jurors.²⁶

The statutes prescribe that a jury list shall be made up from the legal voters of the county. This list contains not less than one-tenth of the legal voters of each town or precinct, and is prepared by the county board in counties having a population of less than 250,000.²⁷ In counties having a population of over 250,000 (Cook County) the list is prepared by jury commissioners, who are appointed by the majority of judges of the courts of record in the county.²⁸

Statutes provide that jurors must be of the age of twenty-one years or upwards, and under sixty-five, in possession of their natural faculties and not infirm or decrepit; free from all legal exceptions; of fair character; of approved integrity; of sound judgment; well informed, and that they shall understand the English language.²⁹

Certain officers and persons in certain businesses and professions are by statute exempt from jury service.

In counties having a population of less than 250,000 (all counties except Cook County) the county board each year selects one hundred names from the jury list for each trial term of the courts of record in the county. These names are put into a box called the jury box. Names are drawn from this box as jurors are needed. In order to insure impartiality in the selection of jurors, it is provided that the clerk who draws the names from the jury box shall be blindfolded.³⁰ In Cook County the jury commissioners select the names of jurors from the jury list; not less than 15,000 names must be kept in the jury box.

²³ Hurd's Revised Statutes, Chap. 110, Sec. 122.

²⁴ Hecker v I. C. R. R. Co., 231 Ill. 574 (1908).

²⁵ Hurd's Revised Statutes, Chap. 37, Secs. 293, 319.

²⁶ Hurd's Revised Statutes, Chap. 79, Sec. 48.

²⁷ Hurd's Revised Statutes, Chap. 78, Sec. 1.

²⁸ Hurd's Revised Statutes, Chap. 78, Sec. 26.

²⁹ Hurd's Revised Statutes, Chap. 78, Sec. 2.

³⁰ Hurd's Revised Statutes, Chap. 78, Sec. 8.

The fee of jurors in the circuit courts, the criminal court and superior courts of Cook County, and in the county courts in civil cases at common law and in criminal cases is three dollars per day,³¹ and five cents per mile for each mile they are required to travel coming to court and returning home. In condemnation proceedings before justices of the peace, jurors receive one dollar per day, and in all other cases before justices of the peace fifty cents per day.³²

Operation of the jury system in Illinois. Definite information regarding the operation of the jury system throughout the state is unobtainable, but certain facts may be obtainable as to Cook County, and this discussion relates almost entirely to that county.

In 1917, of the 28,974 men who were called for jury service in Cook County, 11,968 were excused. The statutes exempt many classes of men from jury service. It is inconvenient for persons to leave their business to perform jury service, and the fee paid to jurors is not large enough to compensate for the time. Many of the more intelligent and influential men escape jury service.

In the circuit and county courts and in the superior court of Cook County, a jury trial in common law cases is had as a matter of right without the payment of an additional fee. The following table shows the amount of money judgments, the jury cost, and the number of cases disposed of in the year 1917 in the circuit and superior courts of Cook County:

COURT.	Total money judgment.	Jury cost.	Number of cases disposed of	
			Chancery.	Law.
Circuit	1,714,072.50	105,693.20	7,455	6,127
Superior	915,477.13	81,550.40	3,632	2,930

No statistics are available to show how many cases were dismissed for want of prosecution, defaulted, settled outside of court, or otherwise disposed of. In the circuit court many cases were stricken from the docket on a general call. The number of chancery cases tried by a jury is not shown. The statistics show that for each common law case disposed of, the cost was \$17.25 in the circuit court and \$27.83 in the superior court. The number of cases dismissed on the general call in the circuit court may account for the difference in jury costs in these courts. In the circuit court, however, jurors for all the judges are kept together and may be assigned from a common reservoir to any judge. In the superior court, each judge calls a full panel of jurors who are used in his court alone.

In some of the cases which involve a small amount, the cost of the jury is sometimes out of proportion to the importance of the case. The fees of the jurors hearing a case amount to thirty-six dollars a day. To this must be added the cost of drawing and calling the jurors and the fees of the jurors who are in attendance but are not being used in the case on trial.

³¹ Hurd's Revised Statutes, Chap. 53, Sec. 44.

³² Hurd's Revised Statutes, Chap. 53, Sec. 45, 46.

In civil cases the selection of a jury ordinarily is done with dispatch. In criminal cases, however, the selection of a jury is often a long and tedious process. In cases tried before the court without a jury, the time consumed in selecting a jury is saved, and usually the opening statements and arguments are shorter when there is no jury.

The following table shows the number of chancery and common law cases disposed of in the circuit and superior courts of Cook County in 1915, 1916 and 1917:

	Superior court.		Circuit court.	
	Chancery.	Law.	Chancery.	Law.
1915.....	3,575	2,901	4,792	4,211
1916.....	3,910	3,968	6,075	3,634
1917.....	3,632	2,930	7,455	6,127
	11,116	9,799	18,322	13,972

During this time only three judges in each court were assigned to hear chancery cases. The table does not, however, show the number of defaults, dismissals, and cases settled outside of court. As many of the chancery cases are divorce cases, and the percentage of defaults in these cases is high, no accurate comparison of the time saved by a trial without a jury can be made. Furthermore, the testimony in many of the chancery cases is heard by masters in chancery.

Under the present system of assigning cases in Cook County, the waiver of a jury in the circuit or superior court does not always tend to expedite the determination of the particular case. No judges are assigned to hear civil non-jury cases at common law. Such cases are put on the calendar with the jury cases and must be called in their order of filing. When reached, it is often difficult to obtain a judge to hear a non-jury case. If a jury is in waiting, the judges usually desire to utilize it to the best advantage, and will often set a non-jury case for hearing at a time when no jury is in waiting. The non-jury case is sometimes heard peace-meal and dragged out to considerable length.

Criticism has been made of the jury system on account of the number of cases in which a jury disagrees. In civil cases disagreements are not frequent. Usually, the cases in which there is a disagreement are important and involve intricate questions of fact. In criminal cases disagreements are more likely to occur. In the municipal court of Chicago from 1908 to 1917, 6,227 trials by jury were had in criminal and quasi-criminal cases. Out of this number, there were sixty disagreements, or less than one per cent. This court has no jurisdiction over indictable offenses. In criminal cases triable only upon indictment, as a jury of twelve is essential, a mistrial necessarily results if a juror becomes incapacitated during the trial, or is unable to serve.

The right to trial by jury in civil cases has been limited in the municipal court of Chicago. In this court the statutes provide that a demand must be made and a fee of six dollars paid in order to have a jury trial in civil cases. The result of this has been that only a small proportion of the civil cases in this court are tried before a jury. The following table shows the number of cases filed and the number of jury demands in civil cases from 1907 to 1917:

Demands.

	By plaintiff.	By defendant.	Total.	Number of suits filed.
1907.....	2,454	1,480	3,934	37,116
1908.....	2,468	3,136	5,604	49,002
1909.....	2,193	2,566	4,759	47,113
1910.....	2,436	2,880	5,316	48,267
1911.....	2,291	2,931	5,222	53,223
1912.....	2,042	3,162	5,204	55,642
1913.....	1,891	3,671	5,562	58,864
1914.....	1,865	3,655	5,520	66,957
1915.....	1,278	3,610	4,880	66,529
1916.....	1,269	3,939	5,208	62,579
1917.....	1,229	4,083	5,312	66,279

This table shows a marked decrease in the number of jury demands by the plaintiff, but an increase in the jury demands by the defendant. In 1907, in one case out of fifteen the plaintiff demanded a jury. In 1917, only one demand was made by the plaintiff for every fifty-three cases filed. In 1907, one defendant out of twenty-five demanded a jury trial, while in 1917 one out of sixteen made such a demand. The totals show a decrease in the proportion of cases in which a jury was demanded.

The decrease in the number of jury demands by plaintiffs may to some extent be attributed to the fact that the condition of the jury calendar is such that a trial cannot be expected in less than a year after the filing of the suit. A non-jury case which does not involve two hundred dollars may be heard from five to fifteen days after the suit is started and other non-jury cases are usually reached in thirty days or less. As the plaintiff ordinarily desires a speedy determination of his case, he is willing to waive a jury in order to save the delay.

The increase in demands by the defendants may perhaps be attributed to the delay gained by demanding a jury, as the defendant who has a poor defense, or cannot readily pay, may desire a delay, either for the purpose of enabling him to meet the demand, or for the purpose of forcing a settlement.

Suggested changes in jury system. As to the following matters suggestions of change are likely to be made to the constitutional convention:

(1) Provision for less than a unanimous verdict in civil and criminal cases. The sentiment for change with respect to criminal cases is probably not so strong as with respect to civil cases.

(2) Limitation of use of jury in civil cases to suits in which a jury is demanded by one of the parties.

(3) Extension of jury service to women. Existing statutes have been so interpreted as to exclude women,³³ and there is a possibility that the constitution if unaltered may be held to exclude women.

³³ *People v Krause*, 196 Ill. App. 140 (1915).

(4) Provision for waiver of jury trial in the trial of indictable offenses.

(5) The grant of jury trial for the punishment of contempt in injunction cases. This matter will be fully discussed in another bulletin.

Jury trial in other states. The constitution of every state guarantees the right to trial by jury in criminal cases. In civil cases the right to trial by jury is guaranteed by the constitutions in all states except Louisiana and Utah. Important changes, however, have been made in some of the features of the jury system as it existed at common law, and these changes will be commented upon in the following paragraphs.

Number necessary to render a verdict. (a) Civil Cases. A less than unanimous verdict is provided for or permitted in eighteen states in civil cases in courts of record. Constitutional provisions allowing a less than unanimous verdict in civil cases are self-executing in California, Idaho, Oregon, Utah, Nevada, Oklahoma, Texas and Montana. In Missouri, a provision is self-executing as to juries in courts of record but not as to juries in courts not of record.³⁴ In Kentucky, Ohio, South Dakota, Arizona, Mississippi, Washington, Minnesota, Colorado and New Mexico, the constitutions permit legislative provision for a less than unanimous verdict.

The constitutions of California, Idaho, Oregon, Utah, Nevada, Oklahoma and Missouri,³⁵ provide that a verdict may be rendered by three-fourths of the jury in civil cases. The constitution of Montana provides that two-thirds of the jury may render a verdict and the constitution of Texas that nine or more jurors may return a verdict. In Nevada the constitution provides that the legislature may by a two-thirds vote require a unanimous verdict.

The constitutions of Kentucky, Ohio and South Dakota permit the legislature to provide that three-fourths or more of the jury may return a verdict. In Arizona, Mississippi and Washington, the constitutions permit the legislature to provide that nine or more jurors may return a verdict.

The Minnesota constitution is more conservative. It provides that the legislature may permit five-sixths of the jury to return a verdict after the jury has deliberated not less than six hours. The statutes of Minnesota permit a five-sixths verdict after the jury has been deliberating not less than twelve hours.

In Colorado and New Mexico, the constitutions permit the legislature to provide for a less than unanimous verdict.

(b) In Criminal Cases. A unanimous verdict of a jury of twelve is required by all states in capital cases.

³⁴ Sharp v National Biscuit Co., 179 Mo. 553.

³⁵ The constitution of Missouri provides that three-fourths of the jury may render a verdict in courts of record, and that the legislature may provide that two-thirds of the jury may render a verdict in courts not of record.

In felonies a unanimous verdict is required in all states except Louisiana. Article 116 of the Louisiana constitution provides that cases in which the punishment may be at hard labor shall be tried by a jury of five, all of whom must concur to render a verdict; cases in which the punishment is necessarily at hard labor by a jury of twelve, nine of whom concurring, may render a verdict. In capital cases, Louisiana requires the unanimous verdict of a jury of twelve.

In cases below the grade of felony the constitutions of Oklahoma and Texas provide that three-fourths of the jury may render a verdict. The constitution of Montana provides that in criminal cases below the grade of felony two-thirds of the jury may render a verdict, and the constitution of Idaho permits the legislature to provide for a two-thirds verdict in misdemeanors.

The constitution of Texas also provides that, "when pending the trial of any case, one or more jurors, not exceeding three, may die or be disabled from sitting, the remainder of the jury shall have power to render a verdict." By statute in some states an extra juror is provided for such a contingency.

Number of jurors. (a) Civil Cases. The constitution of Utah provides that in civil cases the jury shall consist of eight men in courts of general jurisdiction. Seven states³⁶ permit the legislature to provide for a jury of less than twelve men in civil cases in courts of record.

The constitutions of Michigan, Colorado, Wyoming and South Dakota permit the legislature to provide for a jury of less than twelve. The constitution of New Jersey permits the legislature to provide for a jury of six where the amount of the controversy is less than fifty dollars.

In Florida the constitution provides that in civil cases the number of jurors may be fixed by law, but at not less than six. The statutes provide that in civil cases a jury of six shall be sufficient. The Virginia constitution provides that the general assembly may limit the number of jurors in civil cases in circuit and corporation courts to not less than five in cases cognizable by justices of the peace, or to not less than seven in cases not so cognizable. The statutes provide that the jury shall consist of five men in cases cognizable by a justice of peace and of seven in cases not so cognizable. It is further provided by statute in Virginia that the jury may be waived by consent, and that each party may select one person who is eligible as a juror, and the two so selected may choose another with like qualifications, and the three so selected shall constitute a jury.

The constitution of Illinois provides that in the trial of civil cases before justices of the peace a jury of less than twelve may be authorized by law. The statutes provide that in cases before justices of the peace the number of jurors shall be six, or any greater number not exceeding twelve as either party may desire.³⁷

³⁶ Michigan, Colorado, Wyoming, South Dakota, New Jersey, Florida, Virginia.

³⁷ Hurd's Revised Statutes, Chap. 79, Sec. 48.

(b) in Criminal Cases. In the number of jurors in criminal case fewer changes have been made than in civil cases.

The constitution of Utah provides that capital cases shall be tried by a jury of twelve men, but that eight shall constitute a jury in all other cases.

The constitution of Florida permits the legislature to fix the number of jurors at not less than six in any case. The Florida statutes provide that twelve men shall constitute a jury to try all capital cases, and six men shall constitute a jury in all other criminal cases.

The constitution of Louisiana provides that all cases in which the punishment may not be at hard labor shall be tried by the judge without a jury; cases in which the punishment may be at hard labor shall be tried by a jury of five, and cases in which the punishment is necessarily at hard labor or capital by a jury of twelve.

The constitution of Michigan permits the legislature to authorize a trial by less than twelve men, and the constitution of Virginia a jury of less than twelve where the punishment is not by death of confinement in the penitentiary. Several states permit a jury of less than twelve in inferior courts.

Waiver of Jury. (a) Civil Cases. At common law a jury in civil cases may be waived by consent of the parties in actions at law, but unless so waived a trial by jury is had, and this is the rule in Illinois with the qualifications already noted as to justices of the peace and the municipal court of Chicago. In several states this rule has been changed.

The Texas constitution provides that no jury shall be empaneled in civil cases unless demanded by one of the parties, and a jury fee paid into court. The statutes of Texas fix this fee at five dollars.

The constitutions of Michigan and Utah provide that the jury shall be deemed waived in civil cases unless demanded, and the constitution of West Virginia provides that the jury in civil cases shall be waived unless required by either party.

The constitution of Maryland provides that the laws or the rules of the supreme court of Baltimore may require all cases in any of the courts in Baltimore City to be tried before the court without a jury unless the litigants or some one of them shall elect to have their cause tried before a jury.

(b) Criminal Cases. At common law the general rule is that a jury cannot be waived in felonies, but it is generally held that the jury may be waived in misdemeanors. The constitutions of California, Idaho and Montana provide that the jury may be waived in cases not amounting to a felony, and the constitution of Vermont provides that it may be waived where the offense is not punishable by death or imprisonment in the penitentiary.

The constitutions of Minnesota and Wisconsin provide that the jury may be waived in all cases in manner prescribed by law. The statutes of Wisconsin permit the accused to waive the jury and be tried by less than twelve men.

The Maryland constitutional provision with respect to waiver of jury trial in the courts of Baltimore City relates to criminal as well as civil cases.

While no provision is made in the Louisiana constitution for a waiver of the jury, it is provided that in cases where the punishment is not by hard labor the trial shall be by the court without a jury.

Operation of changes in jury system. With respect to the operation of changes in the jury system, a number of letters were written to judges and lawyers in other states, and replies to these letters throw some light upon the problems here under discussion.

In Michigan, Texas and Utah a jury is deemed to be waived in civil cases unless demanded by one of the parties; and in Michigan and Texas this demand must be accompanied by the payment of a fee. This plan seems to have worked well in these states, although the information available indicates that jury trial is demanded in a large number of cases in Utah. In Texas jury trial is demanded in probably not more than one out of four cases.

Ohio by constitutional amendment in 1912 authorized legislation permitting three-fourths verdict, in civil cases, and the three-fourths system established by law, is reported to have given satisfaction. Reports from California are that the three-fourths verdict in civil cases gives general satisfaction, and the same statement may be made as to Utah and Idaho. In Montana the two-thirds verdict in civil cases is reported to give satisfaction, and in Minnesota there seems no desire to alter the plan of a five-sixths verdict after twelve hours deliberation. The only legislation so far enacted in South Dakota with respect to this matter is that of 1893 permitting three-fourths verdicts in minor civil cases; efforts to extend the plan have failed either in the legislature or on a popular referendum, the proposal for a verdict of ten having been defeated upon a popular vote in 1916.

In Montana, two-thirds verdicts in criminal cases below the grade of felony have worked satisfactorily, and the same is true of five-sixths verdicts in misdemeanor cases in Idaho.

Suggested changes in criminal jury. Two suggestions have been made which do not involve a very radical departure from the jury system in this state. (1) It has been suggested that the state be permitted to ask for a change of venue in criminal cases, such a change upon the application of the state is permitted by the constitutions of Kentucky and South Carolina. (2) It is suggested that the accused be permitted to waive jury trial in felony cases, or at least to waive trial by a jury of twelve when a juror becomes disqualified during the trial.

IX. POWER OF THE COURTS TO DECLARE LAWS UNCONSTITUTIONAL.

Development of power in Illinois. The Illinois constitution of 1818 imposed few limitations upon legislative power and associated the judges of the supreme court with the governor in the exercise of the veto power over legislation. The judges as members of the council of revision had power to present objections to a measure before it became law, although the measure might be passed over such objections by a majority of the whole number of members elected to each house. Under the circumstances it was to be expected that few decisions upon the constitutionality of laws would be rendered under the first constitution of Illinois. During the period from 1818 to 1848, there were twenty-nine cases involving the constitutionality of seventeen laws. In seven cases, involving four laws, statutes were held invalid, but only two of the statutes were held invalid upon state constitutional grounds.

The constitution of 1848 materially increased the limitations upon legislative power, and practically recognized by the constitution itself a power in the courts to declare laws unconstitutional. Of the 111 cases in which statutes were contested upon constitutional grounds between 1848 and 1870, much the greater number dealt with constitutional limitations introduced in 1848. Sixty-five of the cases related to local and special legislation. With the increased number of decisions upon questions of constitutionality, the passing upon such questions by the court came to be a much less solemn and responsible function than before 1848, and in 1870 the supreme court passed upon the constitutionality of statutes in two cases when the question was not necessarily involved.

In the constitutional convention of 1870, the power of the courts to pass upon the constitutionality of legislation was recognized without question, and no action was taken upon a proposal "that the supreme court alone shall have power to decide questions arising upon the constitutionality of any act of the legislature; and that no act of the legislature shall be declared unconstitutional by the supreme court except upon unanimous concurrence of all the judges thereof."¹

The action of the convention of 1869-70 indicates a grave distrust of legislative power. Numerous limitations upon the legislature were placed in the constitution of 1870. Detailed provisions against special legislation, limitation as to the form, content and method of enacting measures, and numerous other limitations hedge about the power of the general assembly on every side. The whole attitude of

¹ Debates, Constitutional Convention of 1870 p. 321

the convention indicates that this mass of new limitations was to be enforced by the courts.

From 1870 to the end of the June term, 1913, the supreme court passed upon 789 cases involving the constitutionality of statutes and in more than a fourth of these cases statutes were declared invalid. To a great extent these cases were based upon limitations which first appeared in the constitution of 1870, or upon limitations whose stringency was then increased. For example, between 1870 and 1913, seventy-three cases dealt with the requirements as to titles of acts, twenty-five with technical requirements as to passage of laws, and eighty-seven with special legislation. The number of cases involving constitutional questions has steadily increased, and the cases between 1890 and 1913 outnumbered those between 1818 and 1889. Not only has the total number of cases steadily increased, but there has been an increase in the proportion of cases in which statutes have been declared unconstitutional, and the statutes declared unconstitutional have in recent years been relatively more important than previously.

It is customary now to raise the question of constitutionality as a matter of course in cases which involve new enactments, and in view of the fact that statutes are declared unconstitutional in a number of cases at each term of the supreme court, a declaration of unconstitutionality has necessarily lost the extraordinary and solemn characteristics which it may once have possessed. A function ceases necessarily to be solemn and extraordinary when it is exercised with great frequency. The steadily increasing bulk of cases involving constitutional questions may in great part be explained by (1) the growth of specific limitations upon the general assembly in the constitution itself; (2) the extended use of the "due process of law" limitation, and of the limitation against the enactment of local or special laws granting "any special or exclusive privilege, immunity or franchise whatever", and (3) to the increased persistence with which constitutional objections to statutes have been urged upon the court. It may probably be said of judicial decisions in any field that the extent to which a particular doctrine is applied depends to a large extent upon the persistence of counsel in the argument of cases.

The extended application of "due process of law" and of other broad phrases in the constitution requires a further discussion. The constitution of 1818 and 1848 contained the provision that no one shall be "deprived of his life, liberty or property but by the judgment of his peers or the law of the land." In the constitution of 1870 the now familiar phrase "due process of law" appears, but apparently without any change in the meaning of the constitutional guarantee. The use of this clause, however, has been enormously expanded. Before 1848 there was but one decision (in 1845) based upon this provision, and in that case "due process" was regarded as a limitation upon procedure only. Between 1848 and 1870 there were nine cases (in a majority of which statutes were upheld), and with 1864 began the tendency to employ this limitation as one applying to the substance of statutes, as well as to procedure. Since 1870, and more especially since 1886 the principle

has developed, not only in Illinois, but also in the other states and in the United States supreme court, that a statute deprives of due process of law if it singles out certain persons or classes and imposes upon them burdens not imposed on others in like conditions, or if it seeks to impose regulations regarded by the court as unduly interfering with private rights.

This extended application of due process of law is one which, of course, makes the term impossible of definition, and no courts have sought to define it. The necessary absence of a definite standard as to what may or may not be done under the due process clause has, of course, made difficulty for the legislatures of this and other states. Due process as a limitation upon what the legislature may do is broad and indefinite; due process as a limitation of what procedure is proper under the constitution or statutes has on the whole a fair degree of definiteness. During the period between 1870 and 1913, 115 cases arose on the due process of law clause in Illinois, and of these seventy-four arose between 1900 and 1913.

From the preceding discussion, it may be concluded that (1) the great bulk of increase in the exercise of this power by the courts is to be attributed to increased limitations placed in the constitution itself; (2) that the most important single increase has been due not to an added limitation in the constitution itself, but to the extended application of the "due process of law" clause, and (3) that declaring a statute unconstitutional has now ceased to be a solemn and extraordinary function.

One of the most serious problems which has presented itself with respect to the exercise of this power is that substantially identical clauses (such as the due process of law clause) in the various state constitutions and in the constitution of the United States have been differently construed by different courts. The supreme court of the United States, on the whole, has been more liberal in the construction of "due process of law" than have many of the state courts, and in a number of cases statutes which are "due process of law" under the federal constitution are violative of "due process of law" as construed by the supreme court of Illinois.

The earlier doctrine of the courts was that the question of the constitutionality of a statute should be decided only as an incident to the determination of a bona fide controversy between parties. For a number of years, however, the question of constitutionality has been decided primarily in cases where a person to be affected by a statute seeks an injunction to prevent the enforcement of the statute, or where a person seeks a mandamus to compel action under a statute. It may, of course, be possible to contend that in such cases the rights of the parties are the fundamental issue and the question of constitutionality a mere incident, but as a matter of actual fact, in most cases squarely involving the validity of a statute, the question of constitutionality is the one on trial, even though it is presented in the form of a bona fide controversy. This situation is well recognized by counsel in substantially all of the cases involving the validity of important statutes, and although it is probably true that there are few collusive cases with respect to this

matter, agreed cases to raise the issue of constitutionality are not uncommon in Illinois and in other states.

Ordinarily the question of constitutionality must first be presented to a trial court, although some important cases may be brought originally in the supreme court.² The making of the constitutional issue in the trial court has, however, in this country become a rather formal matter, in order that an appeal may be perfected to the supreme court. The appellate courts of this state have no jurisdiction to pass upon questions of constitutionality, and if a question as to the validity of a statute has been raised in the trial court, taking the case to an appellate court waives this ground of objection.³

Proposals with respect to judicial power. Numerous criticisms have been made of the exercise by the courts of their power to declare laws unconstitutional; and a number of proposals have been made with respect to this matter. Such proposals will be discussed briefly below.

(1) One of the simplest methods of reducing the power of the courts to declare laws unconstitutional is that of reducing the number of state constitutional limitations. It has already been suggested that in Illinois the greater part of the increase in cases involving questions of constitutionality has been due to the introduction of new constitutional limitations. Limitations regarding the procedure in the enactment of legislation and with respect to local and special legislation have been responsible for the annulment of a large proportion of the statutes declared unconstitutional in this state since 1870, and many of the statutes declared unconstitutional on these grounds have been important ones.

The constitution of Illinois provides in detail that various types of local and special legislation shall not be enacted. The constitution also contains a provision that "in all other cases where a general law can be made applicable, no special law shall be enacted." In Illinois, as in substantially all other states, this provision is interpreted by the courts as directed to the judgment of the legislature and not as an enlargement of judicially enforceable limitations.

Some states have adopted a plan with respect to local and special legislation different from that adopted in Illinois. Missouri, in 1875, introduced into its constitution a provision that "in all other cases where a general law can be made applicable no local or special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject." Similar clauses have been adopted in Minnesota (1892), Alabama (1901), Kansas (1906) and Michigan (1908). In Michigan there is an added provision that no local or

² See, for example, the case of *State ex rel Gullett v McCullough*, 254 Ill. 9 (1912).

³ *Griveau v South Chicago Ry. Co.*, 213 Ill. 633 (1905); *Indiana Millers Mutual Fire Ins. Co. v People*, 170 Ill. 474 (1898).

special law "shall take effect until approved by a majority of the electors voting thereon in the district to be affected". Michigan does not in great detail forbid local and special legislation, but has accomplished the same purpose more effectively by requiring a local vote upon such legislation and by making the necessity for a special act a judicial question. The plan adopted in Michigan definitely enlarges judicial power over legislation, but is intended to submit to the court a specific question of fact. If the court confines itself to the question so submitted, little difficulty will result, and the plan adopted in Michigan is likely to prove more satisfactory than that of prohibiting in detail various types of special legislation, and thus raising a large number of questions for judicial determination. That is the enlargement of the judicial power with respect to this matter may result in an actual simplification of the judicial function of passing upon the constitutionality of statutes. The danger of the plan adopted in Michigan is that the term "special legislation" may be construed as meaning any legislation which, in the opinion of the court, deprives of what it regards as proper rights or makes a classification of which the court disapproves. There has been a tendency of this character in the interpretation of this clause in Missouri and Minnesota, and a basis for such an interpretation exists in Illinois in the present interpretation of the special privileges and immunities clause of Article 4, section 22, of the constitution.⁴

Some limitations upon legislative procedure were imposed by the constitution of 1848, but these restrictions were increased in 1870. It would probably be unwise to do away with many of these provisions, but the procedural limitations were primarily intended to guard against fraud or surprise in the enactment of legislation, and it has been urged that it is unnecessary for the accomplishment of their purpose that legislation should be for an indefinite time subject to overthrow because of some formal defect in its enactment. It has, for this reason been suggested that the value of most of the procedural limitations may be fully preserved and difficulties avoided by restricting to a fixed period, possibly one year, the opportunity of attacking legislation because of formal defects. Were this done, some special proceeding would have to be devised for the purpose, in order that a contest within the limited time could be brought, even though no bona fide controversy under the statute had arisen. For this purpose, a New Jersey plan might be copied. A New Jersey Act of 1873 provided that within one year after an act or resolution had been filed with the secretary of state, if "the governor or the person administering the government shall have reason to believe that any such law or joint resolution was not duly passed by both houses of the legislature, or duly approved as required by the constitution, he may, in his discretion, direct the attorney general to present a petition to the supreme court of this state, setting forth the facts and circumstances, and praying that the said law or joint resolution may be declared null and void".⁵

⁴ Upon this subject see F. E. Merrialls: *Some Aspects of Judicial Control over Special and Local Legislation*, 47 *Am. Law Review*, 351.

⁵ See in re "An Act to Amend an Act entitled 'An Act Concerning Public Utilities'", 83 *N. J. Law* 303 (1912).

Such a plan as that indicated with respect to the formal requirements of enactment of legislation is directly in line with the action of the supreme court of Illinois in declining to hear formal objections to a statute which had been upheld on the merits and had been in force for some time.⁶

(2) One important influence in the increasing number of judicial declarations of unconstitutionality is that which depends not upon limitations expressly limiting legislative power, but upon limitations implied from detailed provisions inserted into the constitution. The subject of implied limitations is fully discussed in the pamphlet dealing with the legislative department, but it is of importance here to call attention to the fact that when a provision is placed in the constitution laying down a rule as to legislative policy or authorizing or commanding legislation, such a provision is normally interpreted as implying a prohibition of legislative action otherwise than in the manner specified. In many cases provisions have been placed in state constitutions which were intended for the purpose of authorizing legislation or for the purpose of laying down a rule of policy (which might properly have been dealt with by legislation), without the intention that the provision so inserted should be construed as a limitation upon legislative power. Since about 1840 a large and growing number of decisions declaring statutes unconstitutional has been based upon what may be termed "implied limitations"; that is, upon constitutional provisions not primarily intended as limitations, and not primarily dealing with matters of fundamental or permanent importance. Provisions of this character, it may be properly argued, should not be in a constitution at all, but it should be borne in mind that if such provisions are placed in a constitution they will be interpreted in accordance with now-established judicial doctrine as limitations upon the legislature, and will result in a continuance of a series of technical decisions holding statutes unconstitutional. This matter is commented upon separately here, because it raises a somewhat different type of issue, and presents also the question as to what type of constitution it is desired to adopt.

(3) The growth of decisions under the "due process of law" clause has, as already suggested, not been due to the introduction of any additional limitations upon the general assembly. A plan has been suggested for the purpose of meeting to some extent certain of the criticisms with respect to the state court's application of the "due process of law" clause. The constitution of Illinois provides that "no person shall be deprived of life, liberty or property without due process of law". The Fourteenth Amendment to the constitution of the United States provides "nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". These limitations clearly duplicate each other, and the provision in the national constitution is apparently broader.

The state supreme court is the final judicial interpreter of the state constitution, and "due process of law" in the state constitution

⁶ *Gifford v Culver*, 261 Ill. 530 (1914); *Greenberg v Chicago*, 256 Ill. 213 (1912).

means what the supreme court of Illinois interprets it to mean. Under these circumstances, it is not surprising to find that "due process" often means one thing in Illinois, another thing in another state, and something still different as interpreted by the supreme court of the United States. Under a provision identical with the Fourteenth Amendment, the supreme court of Illinois has, in a number of cases, annulled legislation (as have other higher state courts) when similar legislation has been upheld by the United States supreme court. The Illinois supreme court has sometimes reached a narrower view as to the validity of laws than the United States supreme court, through broad interpretation given to the constitutional provision against special or local laws conferring special privileges, immunities or franchises.

There is distinct value in having broad constitutional provisions for the protection of private rights, and such broad constitutional guarantees are probably incapable of definite interpretation, because the content of rights to be protected under them is not itself definite. However, a large part of the value of such broad clauses is lost unless they are construed uniformly, and a basis for criticism may be found because of the fact that identical clauses are construed differently by different courts. The clauses of the Fourteenth Amendment finally obtain uniform interpretation for the whole country through the United States supreme court, and it has been urged that if it be assumed that the federal clause, as uniformly interpreted by the United States supreme court, will adequately protect private rights, there is no longer a necessity for duplicating clauses in state constitutions. It is urged that state constitutional provisions of this sort and state decisions based thereon serve merely to retard a final and uniform settlement of questions of public policy insofar as such settlement is dependent upon constitutional constructions. Of course, it may be urged (and perhaps correctly) that the power in the state courts to apply such a constitutional provision independently of the attitude of the United States supreme court may occasionally prove of advantage, but on the other hand it is urged that the advantage is more than offset by the criticisms which courts bring upon themselves by different constructions of identical constitutional provisions.

If the "due process of law" clause and other provisions duplicating federal constitutional limitations upon the state were removed from the state constitution, the state courts would then base their decisions upon the federal clauses and would, as a matter of principle, be bound by decisions rendered by the United States supreme court. Under federal statutes, a case may be taken to the supreme court of the United States from the highest state court by writ of error when the decision of a state court is in favor of the validity of a state statute attacked upon federal grounds. Where the decision of the state court is against the validity of the state statute on federal grounds, the United States supreme court may by certiorari hear the case and decide the federal issue itself. Although it is much easier to obtain the review of a state decision in favor of the validity of a state statute on federal grounds than it is to obtain a review of a decision against a state statute upon the same grounds, yet the federal statutes do

permit a means of obtaining a uniform interpretation of the federal limitations for the whole country.

(4) It has been urged that there should be a more definite assurance that the case made upon the constitutionality of a statute is a real case and that all questions upon which constitutionality depends are properly presented to the court. If the case is one between private parties, the state may now intervene through its attorney general. If the case is one in which an individual seeks to enjoin action by a state official, the state attorney general would, as a matter of course, represent the state official. But when a case involves an important statute, there is no assurance that the public interest in the statute will be adequately represented, and in some instances in recent years the state attorney general, nominally representing the state in supporting the statute, has already in an official opinion declared that the statute is unconstitutional.

Where the state or a state official is not a party, the presentation of the case for and against a statute is in the hands of counsel of private parties, and the parties, so far as they are settling their own controversy, cannot be relied upon to present all facts upon which a decision should be based. Courts are clear in the opinion that a statute should not be declared unconstitutional because of one case of individual hardship,⁷ if the general conditions justify it, but a case between private parties is not calculated to bring forward information regarding general conditions which may justify legislation. Except in a few cases, such as *Muller v Oregon*⁸ and *Ritchie v Wayman*,⁹ where unofficial organizations have gathered information, the present methods of testing constitutionality have not proven adequate for the presentation of information other than that involved in a particular case.

As a matter of fact, the trial of a statute, if this phrase may be employed, may properly be urged not to be a matter of mere private interest. A suggestion with respect to this matter has been made in a recent book by Mr. Horace A. Davis:

"Every statute duly enacted should have the force of law. If under its operation a party considers himself aggrieved, he may on notice to the attorney general apply to a court of general jurisdiction for review of its constitutionality. If he can establish actual damage, the judge shall certify that fact to the highest court of the state which shall thereupon set an early date for a hearing on the validity of the statute. The state shall be represented and notice shall be given to the members of the legislature which passed the act, and to the public. All persons interested shall have the right to intervene and argue, and untrammelled by technical rules of evidence, to present the reasons for the legislation. If the court shall, after such hearing, with substantial unanimity find the statute unconstitutional, it shall certify its decision to the secretary of state, and the statute shall, from that date only and to the extent indicated by the decision, cease to be a law. The aggrieved plaintiff shall then be relegated to a court of claims to

⁷ See for example *Ex Parte Kair*, 28 Nev. 425, pp. 429-432.

⁸ 208 U. S. 412 (1908).

⁹ 244 Ill. 509 (1910).

prove the amount of his injury and shall have judgment against the state for the damage he has suffered. All other persons who have meanwhile been aggrieved shall also be compensated in like manner; but no claim shall be made after ten years from the time when the statute takes effect."¹⁰

This suggestion proceeds upon the assumption, in great part true, that the state has as much interest in the annulment as in the enactment of a statute. It has occasionally been suggested that there should be an extension of the system of advisory opinions so that the court may pass in advance upon the constitutionality of proposed legislation. This proposal will be dealt with more at length in a later part of this chapter.

(5) The plan has been adopted in a few cases of limiting the declaration of unconstitutionality to the highest court in the state. In Rhode Island, for some years a question of constitutionality, when raised in a lower court, has been certified to the supreme court for decision. In criminal cases, the question of constitutionality, raised in the lower court is reserved until after the completion of the trial and is certified to the supreme court for decision if the accused is found guilty.¹¹ In Wyoming the lower court may certify important and difficult constitutional questions to the supreme court.¹² An amendment to the Colorado constitution adopted in 1912, in connection with the introduction of the recall of judicial decisions, prevents other courts than the supreme court from passing upon the constitutionality of statutes.

(6) Ex-president Roosevelt advocated in 1912 the so-called "recall of judicial decisions", and in that year a provision for the recall of judicial decisions was inserted into the constitution of Colorado. The recall of judicial decisions would by popular vote establish for the future the constitutionality of a state law which had been declared invalid by the court, and would in effect be a constitutional amendment altering the interpretation placed upon the constitutional provision.

Under the Colorado constitutional provision of 1912, no court except the supreme court may declare unconstitutional a law, or a charter provision adopted by a city. A decision that a law is unconstitutional does not become effective until after sixty days. "Within said sixty days a referendum petition signed by not less than five per cent of the qualified voters . . . may bequest that such law be submitted to the people of this state for adoption or rejection . . . All such laws or parts thereof submitted as herein provided when approved by a majority of the votes cast thereon at such election shall be and become the law of this state notwithstanding the decision of the supreme court. . . ." A decision of the supreme court holding unconstitutional a provision of a municipal home rule charter may in a similar manner be recalled by the voters of the city. Under this plan, the voters of a city are made final interpreters of the state constitution within the limits of such city.

¹⁰ Horace A. Davis, *The Judicial Veto*, 33.

¹¹ Rhode Island General Laws 1909 p. 1049 (Chapter 298, Secs. 1-3).

¹² Wyoming Compiled Statutes, 1910, Sec. 5136. *Burton v Coal Co.*, 18 Wyo. 362 (1909).

The process of state constitutional amendment has often been applied for the purpose of either removing specific constitutional provisions that have ceased to be desirable or of altering the interpretation given by the courts to a broad and indefinite constitutional provision. What is done by a constitutional change in the latter case, is, of course, to establish in the constitution a power which has by judicial interpretation been denied, and to overcome for the future the result of such a decision. The drainage amendment in this state in 1878 was adopted for the express purpose of meeting a difficulty raised by a judicial interpretation of the existing constitutional provision.

Provided the method of amending a state constitution is relatively easy, the people of a state have the privilege if they desire, of adopting into their constitution a policy different from that declared by the highest court to be established by existing constitutional provisions, and this may be called either an overruling of the state court or the establishing of a different constitutional policy. Amendments altering state constitutional provisions, as judicially construed, have not been infrequent. Thus the people of Colorado in 1902 inserted into their constitution a provision fixing an eight hour day in mines and smelters, thereby establishing a different policy from that of a decision of the supreme court. So the people of New York in 1913 overcame the result of the New York court of appeals' decision, insofar as it declared compulsory workmen's compensation to be a violation of the state constitution. In a number of other cases, constitutional amendments have been adopted for the express purpose of establishing in the constitution a policy previously declared by the highest courts to be violative of due process of law.

The proposed recall of judicial decisions was at first thought to present an easier method of passing upon constitutional issues raised by judicial decisions, but there appear to be no advantages of the plan as compared with that of specific amendment to the constitution.

It was urged that the recall of decisions would be more adaptable than the method of amending the state constitution. If, for example, a workmen's compensation law was held unconstitutional, it was said that what the people desire to do is to vote whether that particular law shall be brought back into force; and not to vote on a constitutional amendment authorizing the legislature to enact compensation laws in general, thus permitting the passage again of the law held unconstitutional or the passage of a law of a different character from the one held unconstitutional. The people, it is said, want the law which has just been declared unconstitutional, and by the recall of the decision the constitutional bars are to be let down just far enough to permit that particular law to get over.

Yet, if a policy is desired different from that laid down by the highest state court, the thing that is probably desired is the possibility of dealing with a general problem rather than that of keeping a particular law in force. Important laws declared unconstitutional under broad constitutional guarantees usually relate to legislation which is more or less in a state of experiment: Let us suppose that a workmen's compensation law were passed by a state legislature and then

held unconstitutional by the highest state court, as was the case in New York. The decision of the court is recalled. That is, the particular law in question is no longer to be open to state constitutional objection. The law comes into force and some of its provisions work badly. In order to remove these undesirable features, the next legislature amends the measure in some important respect. Now, the popular vote on the original measure has said that the particular measure of workmen's compensation, and that measure only, should be relieved from state constitutional provisions, as interpreted by the state court; and the court would, if it accepts this popular interpretation of the constitution, now probably hold the amended compensation law unconstitutional, and matters are back at the point from which they started. The proposed recall of judicial decisions is less adaptable and more cumbersome than are the present methods of amending constitutions in most of the states. The Colorado provision adopted in 1912 has not been used, and is hardly likely to be used.

Of course, it should be borne in mind that all that could be accomplished by a recall of judicial decisions or by any other method of overcoming or of preventing a judicial annulment of a state law is that of saying that the state law is not subject to state constitutional objections. Whatever plan the state may adopt with respect to any such matters as are here under consideration will, of course, leave legislation subject to the broad guarantees in the federal constitution against state action. This matter is further commented upon in paragraph 3 above, where the subject of duplicate limitations is discussed.

(7) Ohio and North Dakota have adopted a plan by which an extraordinary majority of the supreme court is required to declare a law unconstitutional.

The Ohio Amendment of 1912 provides that "no law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of the judgment of the court of appeals declaring a law unconstitutional and void". The courts of appeals in Ohio are composed of three judges, and may not reverse the action of lower courts of record except by majority action. If a plan of this sort is to be adopted, the Ohio plan seems pretty clearly unwise. This plan really places upon two out of three judges in an inferior appellate court the power to declare laws unconstitutional subject to a majority support by the supreme court, and might well have the effect of giving greater authority to the decisions of the lower court. A lower court, if there were doubt, would probably resolve it against the statute and so leave the supreme court authority to declare the statute unconstitutional by majority action.

In the six years following 1912, the supreme court of Ohio seems to have been almost as active in declaring laws unconstitutional as in the six years preceding that year. There have been only one or two cases in which the amendment would have had any effect, because in practically all of these cases there was not more than one dissent. There has been one case at least¹³ in which the court declared a law constitu-

¹³ 98 Ohio State 446 (1918).

tional although four of the seven judges regarded it as unconstitutional, but there have been no other such cases. There seems some basis for the view that the court makes an effort to come to a unanimous opinion if possible upon constitutional matters, and it may be that if there is a clear majority in favor of such a view the court would agree to have not more than one dissent recorded. The Ohio plan has another difficulty in that one court of appeals may declare a law unconstitutional and another court of appeals declare the same law unconstitutional. Under the Ohio provision, it would be possible for the supreme court to hold the statute void in affirming the judgment of one court of appeals, but without authority to take the same view as to the action of another court of appeals. Probably, however, if such a case occurred, the decision that the act was unconstitutional, in affirming the judgment of one lower court, would be regarded as binding upon the state as a whole.

A proposal submitted to the people of Minnesota in 1914, but rejected, provided that "no statute shall be declared unconstitutional unless five (out of seven) members of the court shall concur in the decision." The state of North Dakota in 1918 adopted a constitutional provision that "in no case shall any legislative enactment or law of the state of North Dakota be declared unconstitutional unless at least four of the judges shall so decide." The North Dakota supreme court is composed of five judges. If a plan of this sort is to be adopted, the North Dakota and Minnesota provisions seem more satisfactory than that adopted in Ohio, although under the amendment adopted in North Dakota the question may present itself as to whether the supreme court is declaring a law unconstitutional if it affirms the judgment of a lower court holding a law invalid. The North Dakota constitutional provision has been in force for too short a time for any comment to be made upon its effect.

The platform of the labor party in this state favors a constitutional provision that no law shall be declared unconstitutional except by the unanimous action of the supreme court. With respect to this suggestion and also with respect to the suggestion for the requirement of an extraordinary majority of the court to declare laws unconstitutional, some analysis should be made of decisions in this state declaring laws unconstitutional. Two hundred and eight decisions of the supreme court of Illinois declaring laws unconstitutional under the constitution of 1870 have been analyzed. In these cases there were 53 dissents, and of these 26 were dissents without opinions. In 20 cases there was one dissent; in 18 cases there were two dissents; and in 15 cases there were three dissents. If the concurrence of all but one of the members of the supreme court had been required to declare laws unconstitutional, this would have meant for the period since 1870 that 33 out of 208 laws might not have been declared unconstitutional. This, of course, is based on the assumption that the judges would have taken the same view in the face of such a constitutional restriction that they took in the absence of such a restriction. It should be borne in mind that the judges who may desire to dissent in one case may feel that in other cases there should be a

relative degree of ease in declaring that a statute is invalid; and that they might on that account waive their opposition in one case in order to aid in the establishment of a practical rule, which would destroy the effect of a constitutional provision limiting the court.

The chief objection to the power of the courts to declare laws unconstitutional has reference to the use of broad constitutional guarantees as against social and industrial legislation. A list is here given of the more important cases in which laws of this character have been declared unconstitutional by the supreme court of Illinois:

Ramsey v People, 142 Ill. 380 (1892)

Frorer v People, 141 Ill. 171 (1892)

Braceville Coal Co. v People, 147 Ill. 66 (1893)

Ritchie v People, 155 Ill. 98 (1895)

Harding v People, 160 Ill. 459 (1896)

Ruhrstrat v People, 185 Ill. 133 (1900)

Gillespie v People, 188 Ill. 176 (1900)

People *ex rel.* Akin v Butler Street Foundry Co., 201 Ill. 236 (1903)

Matthews v People, 202 Ill. 389 (1903)

Kellyville Coal Co. v Harrier, 207 Ill. 624 (1904)

Starne v People, 222 Ill. 189 (1906)

Massie v Cessna, 239 Ill. 352 (1909)

Josma v Western Steel Car & Foundry Co., 249 Ill. 508 (1911)

People v Schenck, 257 Ill. 384 (1913)

Of these fourteen cases, there were no dissents in twelve. There was one dissent in the case of Starne v People, and there two dissents in the case of Matthews v People. The Starne case may be open to criticism, but perhaps its chief effect was not to defeat a particular type of legislation but to make necessary a bad form of draftsmanship in subsequent legislation enacted to accomplish the purpose sought by the statute there involved.

Comments upon proposals. The plans stated above proceed upon the assumption that the power to declare laws unconstitutional will remain, and it seems that this assumption is one which must be made at the present time. Some of these proposals seek to meet conditions which are incidental to the power of declaring laws unconstitutional, and to make that power to some extent more effective. Others seek definitely to limit the power, and to restrict the authority of the court in passing upon the validity of legislation. The proposal has been made, of course, that the authority of the courts to declare laws unconstitutional should be abolished, and such a proposal, together with a good deal of useful information, will be found in a report recently presented to the American Federation of Labor.¹⁴

¹⁴ Study and Report for American Federation of Labor upon Judicial Control over Legislatures as to Constitutional Questions, by Jackson H. Ralston, Washington, 1919. Proposals to require an extraordinary majority to declare a law unconstitutional and to leave the scope of the state's police power to the final determination of the legislature were discussed and rejected by the Massachusetts constitutional convention in 1918. Debates I, 453, 851.

With respect to the problem here under discussion, it should be suggested that some person or body must finally interpret the constitution. The proposal made by Mr. Ralston would take away from state courts the right to declare invalid acts of state legislatures and from the federal courts the right to declare invalid acts of Congress, leaving to the courts, subject to final review by the United States supreme court, a power to declare state legislative acts invalid as in conflict with the federal constitution, laws or treaties, requiring that courts in such cases should hold statutes invalid only upon the concurrence of three-fourths of their members. For the proper working of the federal system, it would, of course, be necessary that some body pass upon the relationship between federal and state powers, and probably those opposed to the general power of the courts would agree that the United States supreme court has, on the whole, performed efficiently the task of preserving the balance between the national and the state governments under the constitution of the United States.

Aside from the construction of federal powers as against the states, Mr. Ralston's proposal would leave to congress the final determination of its own powers and to the state legislatures the final determination of their powers, assimilating these legislatures to the legislatures of most of the other countries in the world.¹⁵ However, in connection with such a proposal, it must be borne in mind that this power has been a rather essential part of the American governmental system for nearly 150 years.

It is assumed that in this country the courts will remain the bodies to interpret finally the meaning of constitutional texts, even though some limitation may be placed upon them in the performance of this function. The problem of constitutional construction involves much the same type of function as that of statutory construction, and constructions must be given if language is vague or uncertain, as constitutional language is sometime apt to be, although perhaps it may be said that many questions of construction arise not because of any indefiniteness in language, but because changed conditions have brought up problems of which the framers of the constitution could not have thought. A complex constitution makes necessary the prompt settlement if possible of numerous technical questions of construction, and when such questions are once settled a constitution is

¹⁵ In Australia, Argentina, Greece, Norway and Roumania, the courts enforce constitutional limitations in much the same manner as they do in the United States, although cases arise much less frequently than they do with us. In Switzerland, the federal court enforces against cantonal legislation the guarantees in both cantonal and federal constitutions. For Canada a judicial control exists in order to keep the dominion and provincial legislatures within the limits of the British North America Act. In a number of federal governments (Brazil, Mexico, and Switzerland) there exists impliedly or expressly a judicial power to disregard state laws which conflict with the federal constitution or laws, but this may be regarded more appropriately as a control of superior over inferior legislation, rather than a true judicial control over legislation. The constitutions of Portugal, Nicaragua, Honduras, Cuba, Haiti and Venezuela expressly grant to the courts power to disregard laws conflicting with the constitutions, and in several other Latin-American constitutions there are provisions which imply a similar power. Too much reliance, however, must not be placed upon the declarations in some of these constitutions. To complete the list it may be added that in Liberia the courts exercise such a power and that a judicial power over legislation was asserted in the Transvaal in 1896.

likely to operate more effectively than before. Here arises one of the most serious problems in connection with any proposal for the recall of judicial decisions or for the determination of constitutional questions only by an extraordinary majority of the court.

It is well known that practical issues as to the wisdom of particular interpretations influence most of our courts, and judges would not be human were this not true. Requiring a certain proportion of judges to declare a law unconstitutional may well lead to a liberal interpretation in one case, which makes a strong popular or sentimental appeal, as against a strict interpretation in another case. Of course, it must be admitted that courts do not now always take the same attitude in applying a constitutional provision to different types of cases, but a requirement of this sort may accentuate such an attitude.

Not only this, but an element of greater uncertainty will be added when it is known that a majority of a court favored a particular interpretation, but was prevented from adopting that interpretation by a constitutional provision of this character. A change in judicial attitude or a change in the membership of a court would be more likely under such conditions to result in a change of the decisions. Of course, the points just suggested may be met by the argument that courts now frequently change their attitude upon constitutional questions, and that little or no greater uncertainty would be added by the adoption of such a plan. It may be suggested, however, that the recall of judicial decisions, if it were used, would lead to much more uncertainty regarding the text of a constitution than would any other plan. A recall of a decision would make no change in the text of the constitution and would leave the court and everybody in the community uncertain as to the status of the constitutional rule about the particular matter.

Advisory opinions. By constitutional provisions in Massachusetts, New Hampshire, Maine, Rhode Island, Colorado, Florida and South Dakota, certain officers of the government (including the two houses of the legislature in all states except Florida and South Dakota) are authorized to require opinions from the highest state courts upon certain questions. This plan of having the highest court give advisory opinions has been employed a great deal in recent years in the state of Massachusetts in order to obtain opinions as to the validity of proposed legislation in advance of its passage. In South Dakota and Florida such opinions are not constitutionally authorized. In Rhode Island opinions upon proposed legislation are occasionally asked; in Colorado the practice of asking opinions upon proposed legislation was once vigorously pursued, but has now largely disappeared. In Maine and New Hampshire the practice of asking such opinions is employed to some extent, and the practice is apparently on the increase in New Hampshire. At first advisory opinions were regarded as mere advice, but since 1885 such opinions have come to be assigned rather distinct weight, as if they were judicial precedents.

It is with respect to the constitutionality of proposed legislation that advisory opinions have been most useful, but it may be questioned whether this usefulness is not diminished by the tendency to regard such opinions as binding judicial precedents. The theory of advisory opinions was that the judges are the most competent legal officers of the state; and that their legal advice might be appropriately used in certain cases which did not involve controversies between private parties. Of course, in connection with the giving of advisory opinions, if they were authorized by constitutional provision, it would be possible to provide also that no opinion should be given without formal argument, but such opinions would in many cases have to be given on short notice, and probably do not involve as careful safeguards as does the decision of a constitutional issue in a case between private parties; although, as has already been suggested, the decision of a controversy does not itself always bring out all of the points at issue as to the question of constitutionality.

Courts on the whole have been opposed to the giving of advisory opinions, and in some states whose constitutions require such opinions, the courts have attempted to limit rather narrowly their actions in giving advice. There has on the whole been no tendency to adopt in other states a requirement for such opinions.

If the initiative and referendum, such opinions, and an extended use of the advisory opinion, if referendum were to be adopted, one involves legislating by referendum. An opinion may be suggested. The initiative involves legislation by popular vote, and if constitutional defects exist in a proposal to be submitted to popular vote, there may be wisdom in stopping the submission for this reason, because the popular vote would in such case be merely a useless expense. It is for this reason that a proposal was once made in Iowa that in adopting the initiative and referendum a plan at the same time be adopted of submitting each popularly initiated measure to the supreme court for advice as to its constitutionality, before the measure were submitted to the people.

The constitution of Illinois provides that: "All judges of courts of record inferior to the supreme court shall on or before the first day of June of each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their experience may suggest; and the judges of the supreme court shall on or before the first day of January of each year, report in writing to the governor such defects and omissions in the constitution and laws as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws." This provision, which was carried over from an earlier statute in Illinois, has been copied by several states since 1870. Little attention has ever been given to this provision by the courts. In 1909 Governor Deneen addressed a communication to the judges of the supreme court, requesting the aid of the court in framing a valid primary election law. In answer to the governor's request, the justices replied that the aid sought under this provision of the constitution could not properly be given. Justices Cartwright and Carter, in addition, submitted a comprehensive argument covering the

subject of advisory opinions and the requirement that judges report defects and omissions in the law.¹⁶

The reporting of defects in the laws by judges proved of some value when required by statute with respect to a proposed revision of the statutes (which later became the revised statutes of 1874) but the provision has been practically, if not entirely, useless since it came into the constitution of Illinois.¹⁷

¹⁶ 243 Ill. pp. 9 to 41 (1909).

¹⁷ For a full discussion of the subject of advisory opinions, see Arthur R. Ellingwood, *Departmental Cooperation in State Government*, New York, Mac-Millan, 1918. Dr. Ellingwood thinks that the advisory opinion with respect to the constitutionality of legislation is useful and should be extended.

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X. CLAIMS AGAINST THE STATE.

Development in Illinois. No provision was made in the constitution of 1818 for the adjustment of claims against the state. An act of March 23, 1819, provided that the auditor of public accounts might sue and be sued on behalf of the state. When a judgment was rendered against the auditor of public accounts he was to draw a warrant on the treasurer for the amount of the judgment. This warrant was to be paid out of money not otherwise appropriated.¹ This act was repealed in 1829² by an act which provided that the auditor of public accounts might be sued, but that the judgment was not to be conclusive upon the state until examined by the general assembly. By the act of 1829 the general assembly was to make an appropriation to satisfy a judgment or so much of it as was deemed just. Suit against the auditor of public accounts was to be brought only in the county in which the seat of government was located, and an appeal to the supreme court was expressly provided for.

The act of 1829 was replaced in 1845 by another act which was, however, similar in general terms.³ In 1847 an act was passed providing that all unliquidated claims arising from the canal should be proved up by witnesses before the state trustee of the canal, and that all unliquidated claims arising from the internal improvement system should be proved before the auditor of public accounts, and filed with the secretary of state.⁴ This act requires persons having unliquidated claims against the state from any cause whatever, to make out vouchers, and present the claims together with an affidavit of their correctness, and to file them in the office of the secretary of state. It also limited the time in which claims could be brought to two years.

The constitution of 1848 provided that the general assembly should direct by law in what manner suits might be brought against the state.⁵ The general assembly seems not to have acted upon the matter, however, and between 1848 and 1870 the act of 1847 was the only law in force, relating to claims against the state.

The proposed constitution of 1862 contained a provision that suits might be brought against the state in the circuit court of the county where the seat of government was located, but change of venue was permitted.

The constitution of 1870 provides that the state of Illinois shall never be made a defendant in any court of law or equity.⁶ From the

¹ Illinois Laws, 1819, p. 184.

² Revised Laws of Illinois, 1829, p. 171.

³ Revised Statutes, 1845, pp. 394, 464.

⁴ Illinois Laws, 1846, p. 32.

⁵ Constitution of 1848, Art. III., Sec. 34.

⁶ Constitution of 1870, Art. IV., Sec. 26.

debates in the constitutional convention of 1869-70, it appears that the state's experience with the internal improvement and canal bonds was responsible for the adoption of this provision.⁷ In 1841 the fund commissioner of the canal obtained \$261,560 from Macalister and Stebbins. As security he turned over 804 bonds of \$1,000 each. Shortly after this transaction thirty internal improvement bonds of \$1,000 each were turned over to Macalister and Stebbins, on which further advances were to be made. No advances other than the \$261,560 were ever made, but later an order was given to Macalister and Stebbins for 41 bonds of \$1,000 each which they obtained. Canal script to the amount of \$38,215.44 was also received by Macalister and Stebbins. The final accounting showed that they had received bonds and script to the value of \$913,215.44 and that they had advanced only \$261,560. Upon failure of the state to comply with the terms of the contract, Macalister and Stebbins declared the bonds forfeited and demanded payment in full of the \$913,215.44.⁸ In 1847 an act was passed authorizing the funding of the state debt at par but the Macalister and Stebbins bonds were specially excluded from its operation. At the same session an act was passed authorizing a settlement with Macalister and Stebbins at 26 cents on the dollar.⁹ This offer was refused.

In 1849 another act was passed authorizing a settlement by repaying the money advanced with 7 per cent interest.¹⁰ All of the bonds but 114 were funded under this act. The 114 had passed into the possession of other parties, and the holders claimed to have purchased before they had any knowledge that the state refused to pay them at par. The holders of these bonds besieged the legislature for relief until 1865, when an act was passed compelling the surrender of the bonds under penalty of forfeiture of both interest and principal. The amount allowed on each \$1,000 was \$248.13.

In the constitutional convention of 1869-70 it was contended that these holders of the bonds were not bona fide purchasers, but that the courts would be bound by technical rules of evidence which might have allowed a recovery of the full face value of the bonds,¹¹ had the matter been one for judicial determination.

A proposal of amendment permitting the general assembly to provide for commissioners or arbitrators to investigate and report any claims against the state, subject to review of the general assembly, was defeated in the convention of 1869-70. It was urged that this would enable the general assembly to shift responsibility, and that such commissioners would be irresponsible bodies, subject to political pressure.

Interpretation of the constitution of 1870. A brief review is given below of the decisions interpreting the constitutional provision

⁷ Debates, Constitutional Convention 1869-70, p. 961.

⁸ For history of the Macalister and Stebbins bonds see: Davidson & Stuve's History of Ill. p. 673; Ford's History of Ill. p. 210; Laws, 1846, p. 163; Laws, 1849, p. 43.

⁹ Laws, 1846, p. 163.

¹⁰ Laws, 1849, p. 43.

¹¹ Debates of constitutional convention, 1869-70, page 931.

that "the State of Illinois shall never be made defendant in any court of law or equity."

The state cannot be made a party defendant in a proceeding to levy a special assessment to defray the cost of constructing a local improvement even though it owns property that will be benefited by the improvement.¹² It is improper for the Attorney General to file a cross petition in a condemnation proceeding because a cross petitioner in such a proceeding is in effect a defendant;¹³ and this seems to be true even though the state may be required to pay the costs in an abandoned condemnation proceeding in which it was the petitioner.¹⁴ But it is entirely proper for a defendant in a suit in equity brought by the state to file a cross bill.¹⁵

As long as a state officer is acting within the scope of his authority; a suit against him is a suit against the state and cannot be maintained. Thus, a suit cannot be maintained against the penitentiary commissioners to recover damages for breach of a contract to furnish convict labor, or to compel performance thereof.¹⁶ Nor can a suit for damages for personal injuries sustained as a result of the falling down of a grandstand at the state fair grounds be maintained against the state board of agriculture.¹⁷ But a state officer who attempts to transcend his authority, may be restrained by the courts. An officer who attempts to enforce the collection of fees under an improper interpretation of a statute,¹⁸ or who is about to pay out money under an unconstitutional statute,¹⁹ may be enjoined by the courts. A state officer who attempts to deprive an individual of the free enjoyment of his property cannot set up as a defense to an injunction suit against him the fact that the suit against him is in effect a suit against the state, for by his actions in interfering with the use of another's property he is transcending his authority.²⁰ And a civil service employee who has been discharged without cause is entitled to a writ of mandamus to compel the Auditor of Public Accounts to issue a warrant for the salary justly due him during the time that he was illegally prevented from performing the duties of his position.²¹

Claims against state in federal courts. The state can not be sued by a private citizen in the federal courts, as the 11th amendment to the constitution of the United States provides; "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of

¹² *In re City of Mt. Vernon*, 147 Ill. 359 (1893); Report of Attorney General, 1900, p. 191; see *City of Chicago v City of Chicago*, 207 Ill. 37 (1904).

¹³ *People v Sanitary District of Chicago*, 210 Ill. 171 (1904).

¹⁴ *Deneen v Unverzagt*, 225 Ill. 378 (1907).

¹⁵ *Brundage v Knox*, 279 Ill. 450 (1917).

¹⁶ *People v Dulaney*, 96 Ill. 503 (1880).

¹⁷ *Miner v State Board of Agriculture*, 259 Ill. 549 (1913); but see *State Board of Agriculture v Brady*, 266 Ill. 592 (1915).

¹⁸ *G. A. Insurance Co. v Van Cleave*, 191 Ill. 410 (1901).

¹⁹ *Burke v Snively*, 208 Ill. 328 (1904); *Fergus v Russell*, 270 Ill. 304 (1915); See for the statutory regulations of this matter, Laws, 1917, p. 534.

²⁰ *Joos v Illinois National Guard*, 257 Ill. 138 (1913).

²¹ *People v Stevenson*, 272 Ill. 215 (1916).

the United States by citizens of another state, or by citizens or subjects of any foreign state." This amendment does not in terms forbid suits against a state by its own citizens, but the United States supreme court has held such suits to be beyond the jurisdiction of the courts.²²

Claims against the state under the constitution of 1870. In 1877 an act was passed creating the commission of claims. This commission was composed of one judge of the supreme court and two circuit judges. The act declared it to be the duty of this commission to "hear and determine all unadjusted claims of all persons against the state."²³ Awards were to be filed with the Auditor of Public Accounts, and a statement of awards was to be submitted to the General Assembly.

In 1889²⁴ the act of 1877 was amended. The governor was given power to appoint three commissioners, who were to compose the commission of claims instead of the supreme and circuit judges. By this law not more than two commissioners could be of the same party. They were given power to hear and determine all unadjusted claims founded upon any law of the state, or any contract express or implied and all claims that may be referred by either house; claims for taking and damaging property by the state, and unadjusted claims against state institutions.

The act of 1877 as amended by the act of 1889 was replaced by an act of 1903. The act of 1903 created an organization which, although not a court in the proper sense, was called the court of claims. This body was composed of three persons appointed in the same manner as the commissioners under the amendment of 1889, and its authority was made more specific than by earlier legislation.

The present court of claims was created in 1917,²⁵ the previous court being abolished in the same year. Its organization is substantially the same as the organization of the former court of claims, except that the secretary of state instead of the auditor of public accounts is the ex-officio secretary. The jurisdiction of the court of claims was extended by this act to "all claims and demands, legal and equitable, liquidated and unliquidated, ex contractu and ex delicto, which the state as a sovereign commonwealth should, in equity and good conscience, discharge and pay." It is also given power to hear and determine the liability of the state for accidental injuries or death suffered in the course of employment by any employe of the state. The determination in this class of cases is to be made in accordance with the "Workmen's Compensation Act." This court also has power to hear and give its opinion on any controverted question of claims or

²² *Hans v Louisiana*, 134 U. S. 1 (1890). Upon this whole matter see Singewald, *Suability of States*, Johns Hopkins University Studies, Vol. 35, (1915).

²³ Laws, 1877, p. 64.

²⁴ Laws, 1889, p. 69.

²⁵ Hurd's Revised Statutes, Chap. 37, Secs. 331-341 c

demand referred to it by any officer, department, institution, board, arm, or agency of the state government and to report its findings and conclusions to the authority by which it was transmitted for its guidance and action. The attorney general represents the interests of the state in all matters before the court of claims under the legislation of 1917, as he has done under all legislation enacted since 1870.

The act of 1917, expressly provides that; "No appropriation shall hereafter be made by the general assembly to pay any claim or demand, over which the court of claims is herein given jurisdiction, unless an award therefor shall have been made by the court of claims." The court of claims has merely advisory power, and the payment of its awards depends upon action by the general assembly. The constitution provides that "the general assembly shall make no appropriation of money out of the treasury in any private law." The supreme court has held that this does forbid appropriations to pay just claims of private individuals. With respect to the court of claims, the supreme court said: "The bill alleges that the court of claims by the act of 1903 creating it, was given exclusive jurisdiction over all claims against the state, and that the claims for the payment of which the appropriation bills attacked were passed failed to receive the approval of said court, and the bills making the appropriation were therefore unconstitutional and void. The court of claims is a statutory body not provided for in the constitution, and its action can have no effect upon the power of the legislature to pay claims against the state. If the legislature has no such power in any case, favorable action by the court of claims upon the claims would not give the legislature power to pay such claims by making appropriations therefor. If it has the power to pay claims it cannot be deprived of it by unfavorable action on such claims by the court of claims. The power or lack of power to appropriate money to pay claims upon the constitution and not upon the action of the court of claims. There is no provision in that instrument against the payment of a claim which the state is liable for and ought to pay, and as the state cannot be sued either at law or in equity, the power to make such payment must be in the legislature."²⁶

The act of 1917, (passed after the case just cited) in terms forbids appropriations to pay claims over which the court of claims has jurisdiction unless an award has been made by the court of claims, but this limitation is apparently invalid and has been disregarded by the general assembly.

Work of the court of claims. Prior to 1917 the court of claims had power to make awards only in those cases in which the party had a legal claim against the state. It was not discretionary with the court to make an award in favor of the claimant regardless of whether or not he had a legal claim.²⁷ It had no power to make awards for

²⁶ *Fergus v Russell*, 277 Ill. 20 (1917).

²⁷ *Schmidt v State*, 1 Court of Cl. rep. 76 (1890).

damages caused by negligence of the agents of the state, when performing a governmental function, as at common law the state is not liable for negligence in such cases.²⁸ Where the state is conducting a business enterprise for profit it is liable for torts, so the court of claims held that it had power to make awards for damages caused by negligence of the Illinois and Michigan Canal employees.²⁹

Before 1917 few claims were filed in the court of claims. The first volume of the court of claims reports, containing cases from 1889 to 1905, reports only 125 cases; and the second volume, containing cases decided from 1905 to March 17, 1915, reports 143 cases. The jurisdiction of the court to pass upon claims was limited, and broader relief might be granted by the general assembly. Any claim could be brought directly to the general assembly, even though the court of claims had jurisdiction to hear it; and after an award by the court of claims, payment could not be made except by appropriation of the general assembly, so that no delay was avoided by taking the matter to the court of claims. It was natural, therefore, that claims should be presented directly to the general assembly rather than to the court of claims. The situation was unsatisfactory, and a definite effort to remedy it was made in 1917. In the legislative session of that year, the governor vetoed twenty-one appropriations for private claims, because the claims were not first presented to the court of claims, although it had power to act on them under the then existing law. It is not possible constitutionally to make the determination of the court of claims conclusive, for this would make the state subject to suit. But the act of 1917 sought to meet certain other difficulties presented by earlier legislation. It extends the power of the court of claims "to hear and determine all claims and demands, legal and equitable, liquidated and unliquidated, ex contractu and ex delicto, which the state, as a sovereign commonwealth should, in equity and good conscience, discharge and pay". From this it would appear that the court of claims may make an award for a claim not founded on a legal liability. This act also attempts to prohibit the general assembly from making any appropriation for the payment of any claim or demand, over which the court of claims has jurisdiction, unless an award therefor has been made by the court of claims. Although the general assembly probably cannot, without constitutional change, be deprived of its power to make such appropriations, the policy of having all claims determined by this court has been protected to some extent by the veto of appropriations.

The legislation of 1917 has caused an increase in the business of the court of claims. In 1917, bills were passed to pay 75 claims which had been allowed by the court of claims, and of these 13 were vetoed for technical reasons. In 1919 appropriations were made to pay 449 claims which had been allowed by the court of claims.

During the 1919 session of the general assembly appropriations were made to pay 7 of the claims for which the appropriation had been vetoed at the 1917 session because they had not been passed upon

²⁸ *Henke v State*, 2 Court of Cl. rep. 11 (1906).

²⁹ *Holmes v State*, 1 Court of Cl. rep. 324 (1905).

by the court of claims. Two of the claimants had obtained awards from the court of claims. Five claimants had not obtained awards from the court of claims, but the appropriation bill for one of these claims recites that the claim could not be adjusted by the court of claims as the statute of limitations had expired, while another recites that an award had been obtained from the industrial board.

In 1919, appropriations were made to pay 38 claims for which no awards had been made by the court of claims. Nineteen of these claims were for services rendered, supplies furnished, traveling expenses or per diem earned; 3 were for refunds for money expended on behalf of the state; 3 for a refund of inheritance tax; 4 for a refund of corporation fee; 2 for damages for death of an employe of the state; 5 for injuries to employes of the state; 1 for death of a person not an employe of the state; 1 for damages to property caused by a quarantine. An award had been made for one of these claims by the industrial board. The appropriation bill for one of these claims recites that the claim could not be adjusted by the court of claims as the statute of limitations had expired. One other bill recites that the industrial board and the court of claims had held that the case did not come within the provisions of the workmen's compensation act.

Appropriations for three claims were vetoed at the 1919 session of the general assembly. Two of these were vetoed because the state was not liable and one because the accident was the result of the negligence of the injured person and not the result of negligence of the state.

Especial attention should be called to the fact that the act of 1917 vested in the court of claims authority "to hear and determine the liability of the state for accidental injuries or death suffered in the course of employment by any employe of the state, such determination to be made in accordance with the rules prescribed in the act commonly called the 'workmen's compensation act,' the industrial commission hereby being relieved of any duties relative hereto." Before this legislation the Industrial Commission (whose title was industrial board before July 1, 1917), had authority in this matter with respect to state employes.

Claims against the United States. By 1854 claims against the United States became so numerous and the difficulties of discovering the real facts became so great that few of them were acted upon, and many honest creditors of the United States were turned away without a hearing, and others were deterred from presenting their petitions for redress by the difficulties in the way of ever reaching a final determination, while it was occasionally found that, upon hasty consideration or imperfect ex parte evidence, a claim was allowed and paid which was, to say the least, of doubtful validity. To relieve this situation and to afford an opportunity for the systematic investigation of claims, the United States Court of Claims was created in 1855.

The following quotation from Professor Ernst Freund gives a summary statement regarding the United States Court of Claims: "Congress, in 1855, created a court of claims by virtue of its constitutional power to establish inferior courts.³⁰ Under the provisions of this act, however, the decisions of the court were reported back to congress for special action on each separate case, and the committee of claims felt bound to re-examine each claim upon its merits. In this way the beneficial effects of the whole act were almost rendered nugatory. By an amendatory act, passed March 3, 1863, Congress provided, therefore, that all judgments of the court should be paid by the treasury out of any general appropriation made by law for the payment of private claims.³¹ As the same act, however, provided that no money should be paid out of the treasury for any claim until after an estimate of the appropriation for the purpose should have been made by the secretary of the treasury, the supreme court held that this by implication gave power to the secretary to revise decisions of the court of claims, and that such decisions, consequently, did not bear the character of judgments over which, under the constitution, the supreme court could exercise appellate jurisdiction.³² The obnoxious provision was repealed in 1866, and the awards of the court of claims were from that time recognized as final and conclusive judgments. By act of March 3, 1887, the United States circuit and district courts were vested with substantially concurrent jurisdiction with the court of claims."³³

New York commission of claims. The New York constitution provides: "The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law."³⁴ The legislature of New York has at various times created boards or tribunals to pass upon and audit claims against the state. The following account was written by Professor Ernst Freund in 1893:³⁵ "In New York, where the legislature has no constitutional power to establish other than inferior local courts, the bodies to which the adjudication of claims against the state has from time to time been committed bear merely the character of commissions; their awards have not the full force and effect of judgments. The supreme court has not been entrusted with this jurisdiction. A judicial determination of claims against the state was first felt to be a necessity in connection with the state ownership and management of canals. It was committed to a board of canal appraisers by act of 1870, Chapter 321. For other claims against the state the legislature, in 1876, created a board of more general jurisdiction, called the board of audit.... These two boards

³⁰ U. S. Revised Statutes, par. 1049.

³¹ U. S. Revised Statutes, par. 1089.

³² *Gordon v U. S.* 2 Wall. 561.

³³ *Political Science Quarterly*, VIII., 628. Under the judicial code enacted in 1911, this jurisdiction is now in the district courts.

³⁴ Constitution of New York, Art. III, Sec. 19.

³⁵ Freund, Ernst. Private claims against the state, 8 *Pol. Science Quarterly*, p. 629.

were finally merged in 1883 into a more independent commission, called the board of claims, consisting of three commissioners. An appeal from the awards of this board lies to the court of appeals. The awards are reported to the legislature, and require a special appropriation to become payable; so that now, as before, the final disposition of claims against the state depends upon legislative action. It was plainly the intention of the legislature, however, to assimilate the powers and proceedings of the board of claims to those of a regular court, and the necessary appropriations are made as a matter of course and without re-examination of the merits of the respective claims."

In 1897 the name of the board of claims was changed to the court of claims.³⁶ No change was made, however, in its jurisdiction, and it was held that the court of claims was not a judicial organization.³⁷ The name was again changed to the Board of Claims in 1911.³⁸

Provisions in other states. The constitution of Alabama, Arkansas and West Virginia, like that of Illinois, provide that the state shall not be made a defendant in any court.

In twenty-one states³⁹ the constitutions permit the state to be sued, or provide that the legislature may allow such suits, the more common provision being that authorizing legislation upon the matter.

In Idaho and North Carolina the constitutions provide that the highest court shall have original jurisdiction in all claims against the state, but that their decisions shall be merely recommendatory, and that no process shall issue thereon. The Louisiana constitutional provision gives the legislature power to provide that suits may be instituted against the state in the district court at the capitol, and also provides that the object of such suits and the only effect of judgment shall be judicial interpretation of the legal rights of the legislature in making appropriations.

With possibly two exceptions, these constitutional provisions are not self-executing, and few states have passed laws allowing suits against the state. In Arizona and California the laws provide that suits may be brought in any court against the state on contract or for negligence. In Indiana, Mississippi, Nebraska and Nevada, suits may be brought on contracts, but only in the courts at the county in which the capitol is located. In North Dakota, actions respecting the title to property or arising upon contract may be brought in the district court, and if not of a local nature, such actions must be brought in the county in which the capitol is located. The statutes of California, Mississippi, Nebraska, Nevada and North Dakota require that the claim be presented to the auditor of public accounts or to a state board of examiners and refused before suit can be brought. Wisconsin permits a

³⁶ Laws of 1897, Chap. 36.

³⁷ *Swift v Luce*, 204 N. Y. 478 (1912).

³⁸ Laws of 1911, Chap. 856.

³⁹ Arizona, California, Delaware, Florida, Idaho, Indiana, Kentucky, Louisiana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Washington Wisconsin, Wyoming.

suit if the legislature refuses a claim. In Massachusetts suits may be brought in the superior court.

Connecticut, Idaho and Utah do not allow suits, but have boards or commissions to examine contract claims. In Kansas each branch of the legislature has a committee on claims.

Conclusions. There is a long-established principle of English law that the sovereign cannot be sued without its consent, but in England this theory was coupled with legal machinery through which the sovereign gave its consent to be sued. The doctrine that the state cannot be sued without its consent was adopted as to the American states, but without the legal machinery by which the state should consent to be sued. The state legislature thus became the organ to adjudicate claims, and such matters were handled by appropriations. This situation soon proved unsatisfactory. Neither congress nor the state legislatures possessed adequate facilities for the investigation of claims. For this reason, congress created a court of claims in 1855, and a number of states have set up machinery for the investigation of claims.

A small group of state constitutions expressly prohibit suits against the state. Illinois is in this group, through a reversal of policy in 1870, due to a specific local situation.

Twenty state constitutions expressly authorize suits against the state, but the bulk of them do so if legislation is enacted for the purpose, and in only a few of these states has such legislation been enacted. In the absence of constitutional provision either authorizing or prohibiting suits against the state, legislature may authorize such suits; although if a state constitution specifies what courts may be created, a separate court for this purpose could not be set up, even though the legislature might authorize suits against the state.

The real problem is that as to whether a judicial remedy is better than investigation by a board. The remedy obtained through suit against the state is likely to limit itself to purely legal rights as distinguished from those in which a claim may exist as a matter of conscience; and suits against the state where permitted will ordinarily be conducted in accordance with technical rules of procedure.

The presentation of claims before a purely administrative body (as is the Illinois court of claims) is, on the other hand, likely to afford a more flexible procedure. Under the administrative plan, of course, awards are not paid unless the general assembly appropriates for the purpose, but appropriations are almost certain to be made in such a case. The problem of most specific interest in Illinois today is occasioned by the fact that the general assembly has discretion to appropriate for the payment of claims, irrespective of whether they have been allowed by the body set up for their adjudication.

The large project of construction now being undertaken by the state of Illinois makes this problem more important than at any other time in the state's history. The following alternatives present themselves as to this matter:

1. The presentation of claims directly to the general assembly, with that body appropriating to meet those which it finds proper. This plan is to some extent still employed in Illinois, though it would almost certainly prove unsatisfactory for the determination of a large number of claims. The Illinois general assembly in 1917 enacted into a law a provision that appropriations should not be made to pay claims, unless they were first passed upon by the court of claims (if within the jurisdiction of that body), but this enactment is apparently a mere declaration of policy, without constitutional validity.

2. The state might return to the constitutional policy of 1848, under which the general assembly was authorized to direct the manner in which suits might be brought against the state. Such a policy would seem to imply that the general assembly might authorize suit in any court of record, though, of course, a constitutional provision could itself determine the method of bringing suit.

3. The state could adopt the policy of the national government and set up a court (a judicial body in fact as well as in name) to pass upon claims against it. Such a body could not be set up under the present constitution of Illinois, for the courts that may be established are expressly enumerated in the constitution. It may be suggested that a permanent judicial body for this purpose is undesirable unless claims are numerous and likely to continue so.

4. The state may adhere to the present statutory plan, with a board having authority to make awards, such awards to be paid only after legislative appropriations. If such a plan is adopted, attention may well be given to the New York constitutional provisions under which the legislature is itself forbidden to audit or allow any private claim.

Here as elsewhere in the constitution it is desirable merely to lay down the general policy in the constitution, rather than to make detailed specifications.

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APPENDIX NO. 2. ILLINOIS CONSTITUTIONAL PROVISIONS.

Article VI.

JUDICIAL DEPARTMENT

§ 1. The judicial powers, except as in this article is otherwise provided, shall be vested in one Supreme Court, circuit courts, county courts, justices of the peace, police magistrates, and in such courts as may be created by law in and for cities and incorporated towns.

SUPREME COURT

§ 2. The Supreme Court shall consist of seven judges, and shall have original jurisdiction in cases relating to the revenue, in *mandamus* and *habeas corpus*, and appellate jurisdiction in all other cases. One of said judges shall be Chief Justice; four shall constitute a quorum, and the concurrence of four shall be necessary to every decision.

§ 3. No person shall be eligible to the office of judge of the Supreme Court unless he shall be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in this State five years next preceding his election, and be a resident of the district in which he shall be elected.

§ 4. Terms of the Supreme Court shall continue to be held in the present grand divisions at the several places now provided for holding the same; and until otherwise provided by law, one or more terms of said court shall be held, for the Northern division, in the city of Chicago each year, at such times as said court may appoint, whenever said city or the county of Cook shall provide appropriate rooms therefor, and the use of a suitable library, without expense to the State. The judicial divisions may be altered, increased or diminished in number, and the times and places of holding said court may be changed by law.

§ 5. The present grand divisions shall be preserved, and be denominated Southern, Central and Northern, until otherwise provided by law. The State shall be divided into seven districts for the election of judges, and until otherwise provided by law they shall be as follows:

First District—The counties of St. Clair, Clinton, Washington, Jefferson, Wayne, Edwards, Wabash, White, Hamilton, Franklin, Perry, Randolph, Monroe, Jackson, Williamson, Saline, Gallatin, Hardin, Pope, Union, Alexander, Pulaski and Massac.

Second District.—The counties of Madison, Bond, Marion, Clay, Richland, Lawrence, Crawford, Jasper, Effingham, Fayette, Montgomery, Macoupin, Shelby, Cumberland, Clark, Greene, Jersey, Calhoun and Christian.

Third District—The counties of Sangamon, Macon, Logan, DeWitt, Piatt, Douglas, Champaign, Vermilion, McLean, Livingston, Ford, Iroquois, Coles, Edgar, Moultrie and Tazewell.

Fourth District—The counties of Fulton, McDonough, Hancock, Schuyler, Brown, Adams, Pike, Mason, Menard, Morgan, Cass and Scott.

Fifth District—The counties of Knox, Warren, Henderson, Mercer, Henry, Stark, Peoria, Marshall, Putnam, Bureau, LaSalle, Grundy, and Woodford.

Sixth District—The counties of Whiteside, Carroll, Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Kane, Kendall, DeKalb, Lee, Ogle, and Rock Island.

Seventh District—The counties of Lake, Cook, Will, Kankakee and DuPage.

The boundaries of the districts may be changed at the session of the General Assembly next preceding the election of judges therein, and at no other time; but whenever such alterations shall be made the same shall be upon the rule of equality of population, as nearly as county boundaries will allow, and the districts shall be composed of contiguous counties, in as nearly compact form as circumstances will permit. The alteration of the districts shall not affect the tenure of office of any judge.

§ 6. At the time of voting on the adoption of this Constitution, one judge of the Supreme Court shall be elected by the electors thereof, in each of said districts numbered two, three, six and seven, who shall hold his office for the term of nine years from the first Monday of June, in the year of our Lord one thousand eight hundred and seventy. The term of office of judges of the Supreme Court, elected after the adoption of this Constitution, shall be nine years, and on the first Monday of June of the year in which the term of any of the judges in office at the adoption of this Constitution, or of the judges then elected, shall expire, and every nine years thereafter, there shall be an election for the successor or successors of such judges in the respective districts wherein the term of such judges shall expire. The Chief Justice shall continue to act as such until the expiration of the term for which he was elected, after which the judges shall choose one of their number Chief Justice.

§ 7. From and after the adoption of this Constitution, the judges of the Supreme Court shall each receive a salary of four thousand dollars per annum, payable quarterly, until otherwise provided by law. And after said salaries shall be fixed by law, the salaries of the judges in office shall not be increased or diminished during the terms for which said judges shall have been elected.

§ 8. Appeals and writs of error may be taken to the Supreme Court held in the grand division in which the case is decided, or by consent of the parties, to any other grand division.

§ 9. The Supreme Court shall appoint one reporter of its decisions, who shall hold his office for six years, subject to removal by the court.

§ 10. At the time of the election of Representatives in the General Assembly, happening next preceding the expiration of the terms of office of the present clerks of said court, one clerk of said court for each division shall be elected, whose term of office shall be six years from said election, but who shall not enter upon the duties of his office until the expiration of the term of his predecessor, and every six years thereafter one clerk of said court for each division shall be elected.

APPELLATE COURTS

§ 11. After the year of our Lord one thousand eight hundred and seventy-four, inferior appellate courts, of uniform organization and jurisdiction, may be created in districts formed for that purpose, to which such appeals and writs of error as the General Assembly may provide, may be prosecuted from circuit and other courts, and from which appeals and writs of error shall lie to the Supreme Court, in all criminal cases, and cases in which a franchise, or freehold, or the validity of a statute is involved, and in such other cases as may be provided by law. Such appellate courts shall be held by such number of judges of the circuit courts, and at such times and places, and in such manner as may be provided by law; but no judge shall sit in review upon cases decided by him; nor shall said judges receive any additional compensation for such services.

CIRCUIT COURTS

§ 12. The circuit courts shall have original jurisdiction of all causes in law and equity, and such appellate jurisdiction as is or may be provided by law, and shall hold two or more terms each year in every county. The terms of office of judges of circuit courts shall be six years.

§ 13. The State, exclusive of the county of Cook and other counties having a population of 100,000, shall be divided into judicial circuits, prior to the expiration of the terms of office of the present judges of the circuit courts. Such circuits shall be formed of contiguous counties, in as nearly compact form and as nearly equal as circumstances will permit, having due regard to business, territory and population, and shall not exceed in number one circuit for every 100,000 of population of the State. One judge shall be elected for each of said circuits by the electors thereof. New circuits may be formed and the boundaries of circuits changed by the General Assembly, at its session next preceding the election for circuit judges, but at no other time: *Provided*, that the circuits may be equalized or changed at the first session of the General Assembly after the adoption of this Constitution. The creation, alteration or change of any circuit shall not affect the tenure of office of any judge. Whenever the business of the circuit court of any one, or of two or more contiguous counties, containing a population exceeding 50,000, shall occupy nine months of the year, the General Assembly may make of such county, or counties, a separate circuit. Whenever additional circuits are created, the foregoing limitations shall be observed.

§ 14. The General Assembly shall provide for the times of holding court in each county; which shall not be changed, except by the

General Assembly next preceding the general election for judges of said courts; but additional terms may be provided for in any county. The election for judges of the circuit courts shall be held on the first Monday in June in the year of our Lord one thousand eight hundred and seventy-three, and every six years thereafter.

§ 15. The General Assembly may divide the State into judicial circuits of greater population and territory, in lieu of the circuits provided for in section 13 of this article, and provide for the election therein, severally, by the electors thereof, by general ticket, of not exceeding four judges, who shall hold the circuit courts in the circuit for which they shall be elected, in such manner as may be provided by law.

§ 16. From and after the adoption of this Constitution, judges of the circuit courts shall receive a salary of \$3,000.00 per annum, payable quarterly until otherwise provided by law, and after their salaries shall be fixed by law they shall not be increased or diminished during the terms for which said judges shall be, respectively, elected; and from and after the adoption of this Constitution, no judge of the Supreme or circuit court shall receive any other compensation, perquisite or benefit, in any form whatsoever, nor perform any other than judicial duties to which may belong any emoluments.

§ 17. No person shall be eligible to the office of judge of the circuit or any inferior court, or to membership in the "board of county commissioners," unless he shall be at least twenty-five years of age and a citizen of the United States, nor unless he shall have resided in this State five years next preceding his election, and be a resident of the circuit, county, city, cities or incorporated town in which he shall be elected.

COUNTY COURTS

§ 18. There shall be elected in and for each county one county judge and one clerk of the county court, whose term of office shall be four years. But the General Assembly may create districts of two or more contiguous counties, in each of which shall be elected one judge, who shall take the place of and exercise the powers and jurisdiction of county judges in such districts. County courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians and conservators and settlement of their accounts, in all matters relating to apprentices, and in proceedings for the collection of taxes and assessments, and such other jurisdiction as may be provided for by general law.

§ 19. Appeals and writs of error shall be allowed from final determinations of county courts, as may be provided by law.

PROBATE COURTS

§ 20. The General Assembly may provide for the establishment of a probate court in each county having a population of over 50,000, and for the election of a judge thereof, whose term of office shall be the same as that of the county judge, and who shall be elected at the same time and in the same manner. Said courts, when established, shall

have original jurisdiction of all probate matters, the settlement of estates of deceased persons, the appointment of guardians and conservators, and settlement of their accounts; in all matters relating to apprentices, and in cases of sales of real estate of deceased persons for the payment of debts.

JUSTICES OF THE-PEACE AND CONSTABLES

§ 21. Justices of the peace, police magistrates and constables shall be elected in and for such districts as are, or may be provided by law, and the jurisdiction of such justices of the peace and police magistrates shall be uniform.

STATE'S ATTORNEYS

§ 22. At the election for members of the General Assembly in the year of our Lord one thousand eight hundred and seventy-two, and every four years thereafter, there shall be elected a State's attorney in and for each county, in lieu of the State's attorneys now provided by law, whose term of office shall be four years.

COURTS OF COOK COUNTY

§ 23. The county of Cook shall be one judicial circuit. The circuit court of Cook County shall consist of five judges, until their number shall be increased as herein provided. The present judge of the recorder's court of the city of Chicago, and the present judge of the circuit court of Cook County, shall be two of said judges, and shall remain in office for the terms for which they were respectively elected, and until their successors shall be elected and qualified. The superior court of Chicago shall be continued, and called the "Superior Court of Cook County." The General Assembly may increase the number of said judges, by adding one to either of said courts for every additional fifty thousand inhabitants in said county over and above a population of four hundred thousand. The terms of office of the judges of said courts, hereafter elected, shall be six years.

§ 24. The judge having the shortest unexpired term shall be Chief Justice of the court of which he is a judge. In case there are two or more whose terms expire at the same time, it may be determined by lot which shall be Chief Justice. Any judge of either of said courts shall have all the powers of a circuit judge, and may hold the court of which he is a member. Each of them may hold a different branch thereof at the same time.

§ 25. The judges of the superior and circuit courts, and the State's attorney, in said county, shall receive the same salaries, payable out of the State treasury, as is or may be paid from said treasury to the circuit judges and State's attorney's of the State, and such further compensation, to be paid by the county of Cook, as is or may be provided by law. Such compensation shall not be changed during their continuance in office.

§ 26. The recorder's court of the city of Chicago shall be continued, and shall be called the "Criminal Court of Cook County." It shall have the jurisdiction of a circuit court in all cases of criminal and *quasi* criminal nature, arising in the county of Cook, or that may be

brought before said court pursuant to law; and all recognizances and appeals taken in said county, in criminal and *quasi* criminal cases shall be returnable and taken to said court. It shall have no jurisdiction in civil cases, except in those on behalf of the people, and incident to such criminal or *quasi* criminal matters, and to dispose of unfinished business. The terms of said criminal court of Cook County shall be held by one or more of the judges of the circuit or superior court of Cook County, as nearly as may be in alteration, as may be determined by said judges, or provided by law. Said judges shall be *ex-officio* judges of said court.

§ 27. The present clerk of the recorder's office of the city of Chicago shall be the clerk of the criminal court of Cook County during the term for which he was elected. The present clerks of the superior court of Chicago, and the present clerk of the circuit court of Cook County, shall continue in office during the terms for which they were respectively elected; and thereafter there shall be but one clerk of the superior court, to be elected by the qualified electors of said county, who shall hold his office for the term of four years, and until his successor is elected and qualified.

§ 28. All justices of the peace in the city of Chicago shall be appointed by the Governor, by and with the advice and consent of the Senate (but only upon the recommendation of a majority of the judges of the circuit, superior and county court), and for such districts as are now or shall hereafter be provided by law. They shall hold their office for four years, and until their successors have been commissioned and qualified, but they may be removed by summary proceeding in the circuit or superior court, for extortion or other malfeasance. Existing justices of the peace and police magistrates may hold their offices until the expiration of their respective terms.

GENERAL PROVISIONS

§ 29. All judicial officers shall be commissioned by the Governor. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments and decrees of such courts, severally, shall be uniform.

§ 30. The General Assembly may, for cause entered on the journals, upon due notice and opportunity of defense, remove from office any judge, upon concurrence of three-fourths of all the members elected, of each house. All other officers in this article mentioned shall be removed from office on prosecution and final conviction for misdemeanor in office.

§ 31. All judges of courts of record, inferior to the Supreme Court, shall, on or before the first day of June of each year, report in writing to the judges of the Supreme Court such defects and omissions in the laws as their experience may suggest; and the judges of the Supreme Court shall, on or before the first day of January of each year, report in writing to the Governor such defects and omissions in the Constitution and laws as they may find to exist, together with

appropriate forms of bills to cure such defects and omission in the laws. And the judges of the several circuit courts shall report to the next General Assembly the number of days they have held court in the several counties composing their respective circuits, the preceding two years.

§ 32. All officers provided for in this article shall hold their offices until their successors shall be qualified, and they shall respectively, reside in the division, circuit, county or district for which they may be elected or appointed. The terms of office of all such officers, where not otherwise prescribed in this article, shall be four years. All officers, where not otherwise provided for in this article, shall perform such duties and receive such compensation as is or may be provided by law. Vacancies in such elective offices shall be filled by election; but where the unexpired term does not exceed one year the vacancy shall be filled by appointment, as follows: Of judges, by the Governor; of clerks of courts, by the court to which the office appertains, or by the judge or judges thereof; and of all such other offices, by the board of supervisors, or board of county commissioners, in the county where the vacancy occurs.

§ 33. All process shall run: *In the name of the People of the State of Illinois*; and all prosecutions shall be carried on: *In the name and by the authority of the People of the State of Illinois*; and conclude: *Against the peace and dignity of the same*. "Population," whenever used in this article, shall be determined by the next preceding census of this State or of the United States.

Article II.

§ 5. The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace, by a jury of less than twelve men, may be authorized by law.

§ 8. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia, when in actual service in time of war or public danger: *Provided*, that the grand jury may be abolished by law in all cases.

§ 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

§ 13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by

law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

Article IV.

§ 26. The State of Illinois shall never be made defendant in any court of law or equity.

§ 34. The General Assembly shall have power, subject to the conditions and limitations hereinafter contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such manner as the General Assembly shall prescribe) in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefore shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special); and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution; and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters (voting on the question at any election, general, municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the General Assembly shall create municipal courts in the city of Chicago it may abolish the offices of justices of the peace, police magistrates and constables in and for the territory within said city, and may limit the jurisdiction of justices of the peace in the territory of said county of

Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe; and the General Assembly may pass all laws which it may deem requisite to effectually provide a complete system of local municipal government in and for the city of Chicago.

No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect section four (4) of Article XI of the Constitution of this State.

Article X.

§ 14. The exercise of power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the General Assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

APPENDIX NO. 3 TABLES.

TABLE 1.—*Population of Supreme Court Election Districts by counties.**First District.*

St. Clair	119,870
Clinton	22,832
Washington	18,759
Jefferson	29,111
Wayne	25,697
Edwards	10,049
Wabash	14,913
White	23,052
Hamilton	18,227
Franklin	25,943
Perry	22,088
Randolph	29,120
Monroe	13,508
Jackson	35,143
Williamson	45,098
Saline	30,204
Gallatin	14,628
Hardin	7,015
Pope	11,215
Union	21,856
Johnson	14,331
Alexander	22,741
Pulaski	15,650
Massac	14,200

605,250

Second District.

Madison	89,847
Bond	17,075
Marion	35,094
Clay	18,661
Richland	15,970
Lawrence	22,661
Crawford	26,281
Jasper	18,157
Effingham	20,055
Fayette	28,075
Montgomery	35,311
Macoupin	50,685
Shelby	31,693
Cumberland	14,281
Clarke	23,517
Greene	22,363
Jersey	13,954
Calhoun	8,610
Christian	34,594
Pike	28,622
Scott	10,067

565,573

Third District.

Sangamon	91,024
Macon	54,186
Logan	30,216
DeWitt	18,906
Piatt	16,376
Douglas	19,591
Champaign	51,829
Vermilion	77,996
McLean	68,008
Ford	17,096
Iroquois	35,543
Coles	34,517
Edgar	27,336
Moultrie	14,630
Livingston	40,465
Tazewell	34,027

631,746

Fourth District

Fulton	49,549
McDonough	26,887
Hancock	30,638
Schuyler	14,852
Brown	10,397
Adams	64,588
Mason	17,377
Menard	12,796
Morgan	34,420
Cass	17,372
Rock Island	70,404
Mercer	19,723
Warren	23,313
Henderson	9,724

402,040

Fifth District.

Knox	46,159
Henry	41,736
Stark	10,098
Peoria	100,255
Marshall	15,679
Putnam	7,561
Bureau	43,975
La Salle	90,132
Grundy	24,162
Woodford	20,506

400,263

TABLE 1.—*Population of Supreme Court Districts—Concluded.*

<i>Sixth District.</i>		<i>Seventh District.</i>	
Whiteside	34,507	Lake	55,058
Carroll	18,035	Cook	2,405,233
Jo Daviess	22,657	Will	84,371
Stephenson	36,821	Kankakee	40,752
Winnebago	63,153	DuPage	33,432
Boone	15,481		2,618,846
McHenry	32,509		
Kane	91,862	<i>Recapitulation.</i>	
Kendall	10,777	First District.....	605,250
DeKalb	33,457	Second District	565,573
Lee	27,750	Third District	631,746
Ogle	27,864	Fourth District	402,040
		Fifth District	400,263
		Sixth District	414,873
	414,873	Seventh District	2,618,846
			5,638,591

TABLE 2.—*Population of Appellate Court Districts by counties.*

<i>First District.</i>		Population	Population
County.		1870.	1910.
Cook County		349,966	2,405,233
<i>Second District.</i>		Population	Population
County.		1870.	1910.
Boone		12,942	15,481
Bureau		34,415	43,975
Carroll		16,705	18,035
DeKalb		23,265	33,457
DuPage		16,685	33,432
Grundy		14,928	24,162
Henderson		12,582	9,724
Henry		35,506	41,736
Iroquois		25,782	35,543
Jo Daviess		27,820	22,657
Kane		39,091	91,862
Kankakee		24,352	40,752
Kendall		12,399	10,777
Knox		39,522	46,159
Lake		21,914	55,058
LaSalle		69,792	90,132
Lee		27,171	27,750
Livingston		31,471	40,465
Marshall		16,956	15,679
McHenry		23,762	32,509
Mercer		18,769	19,723
Ogle		27,492	27,864
Peoria		47,540	100,255
Putnam		6,280	7,561
Rock Island		29,783	70,404
Stark		10,751	10,098
Stephenson		30,608	36,821
Warren		23,174	23,313
Whiteside		27,503	34,507
Will		43,013	84,371

TABLE 2.—*Population of Appellate Court Districts—Continued.**Second District.*

	Population 1870.	Population 1910.
Winnebago	29,301	63,153
Woodford	18,956	20,506
	840,220	1,227,921

Third District.

County.	Population 1870.	Population 1910
Adams	56,362	64,588
Brown	12,205	10,397
Calhoun	6,562	8,610
Cass	11,580	17,372
Champaign	32,737	51,829
Christian	20,363	34,594
Clarke	18,719	23,517
Coles	25,535	34,517
Cumberland	12,223	14,281
DeWitt	14,768	18,906
Douglas	13,484	19,591
Edgar	21,450	27,336
Ford	9,103	17,096
Fulton	38,291	49,549
Greene	20,277	22,363
Hancock	35,935	30,638
Jersey	15,054	13,954
Logan	23,053	30,216
Macon	26,481	54,186
Macoupin	32,726	50,685
Mason	16,194	17,377
McDonough	26,509	26,887
McLean	53,988	68,008
Menard	11,735	12,796
Montgomery	25,314	35,311
Morgan	28,463	34,420
Moultrie	10,385	14,630
Piatt	10,953	16,376
Pike	30,768	28,622
Sangamon	46,352	91,024
Schuyler	17,419	14,852
Scott	10,530	10,067
Shelby	25,476	31,693
Tazewell	27,903	34,027
Vermilion	30,388	77,996
	819,285	1,108,311

Fourth District.

County.	Population 1870.	Population 1910
Alexander	10,544	22,741
Bond	13,152	17,075
Clay	15,875	18,661
Clinton	16,285	22,832
Crawford	13,889	26,281
Edwards	7,565	10,049
Effingham	15,653	20,055
Fayette	19,638	28,075
Franklin	12,652	25,943

TABLE 2.—*Population of Appellate Court Districts—Concluded.**Fourth District.*

	Population 1870.	Population 1910.
Gallatin	11,134	14,628
Hamilton	13,014	18,227
Hardin	5,113	7,015
Jackson	19,634	35,143
Jasper	11,238	18,157
Jefferson	17,864	29,111
Johnson	11,248	14,331
Lawrence	12,533	22,661
Madison	44,131	89,847
Marion	20,622	35,094
Massac	9,581	14,200
Monroe	12,982	13,508
Perry	13,723	22,088
Pope	11,437	11,215
Pulaski	8,752	15,650
Randolph	20,859	29,120
Richland	12,803	15,970
Saline	12,714	30,204
St. Clair	51,068	119,870
Union	17,518	21,856
Wabash	8,841	14,913
Washington	17,599	18,759
Wayne	10,758	25,697
White	16,846	23,052
Williamson	17,329	45,098
	534,594	897,126
<i>Recapitulation.</i>		
	1870.	1910.
First District	349,966	2,405,233
Second District	840,220	1,227,921
Third District	819,285	1,108,311
Fourth District	534,594	897,126
	2,544,065	5,638,591

TABLE 3. *Population of Judicial Circuits by Counties in the Years 1890 and 1910.**First Circuit.*

County.	1890.	1910.
Alexander	16,563	22,741
Jackson	27,809	35,143
Johnson	15,013	14,331
Massac	11,313	14,200
Pope	14,016	11,215
Pulaski	11,355	15,650
Saline	19,342	30,204
Union	21,549	21,856
Williamson	22,226	45,098
Total	159,186	210,438

TABLE 3.—*Population of Judicial Circuits—Continued.**Second Circuit.*

County.	1890.	1910.
Crawford	17,283	26,281
Edwards	9,444	10,049
Franklin	17,138	25,943
Gallatin	14,935	14,628
Hamilton	17,800	18,227
Hardin	7,234	7,015
Jefferson	22,590	29,111
Lawrence	14,693	22,661
Richland	15,019	15,970
Wabash	11,866	14,913
Wayne	23,806	25,697
White	25,005	23,052
Total	196,813	233,547

Third Circuit.

Bond	14,550	17,075
Madison	51,535	89,847
Monroe	12,948	13,508
Perry	17,529	22,088
Randolph	25,049	29,120
St. Clair	66,571	119,870
Washington	19,262	18,759
Total	207,444	310,267

Fourth Circuit.

Christian	30,531	34,594
Clay	16,772	18,661
Clinton	17,411	22,832
Effingham	19,358	20,055
Fayette	23,367	28,075
Jasper	18,188	18,157
Marion	24,341	35,094
Montgomery	30,003	35,311
Shelby	31,191	31,693
Total	211,162	244,472

Fifth Circuit.

Coles	30,093	34,517
Clark	21,899	23,517
Cumberland	15,443	14,281
Edgar	26,787	27,336
Vermillion	49,905	77,996
Total	144,127	177,647

Sixth Circuit.

Champaign	42,159	51,829
DeWitt	17,011	18,906
Douglas	17,669	19,591
Macon	38,083	54,186
Moultrie	14,481	14,630
Piatt	17,062	16,375
Total	146,465	175,518

TABLE 3.—*Population of Judicial Circuits—Continued.*

<i>Seventh Circuit.</i>			
County.		1890.	1910.
Greene		23,791	22,363
Jersey		14,810	13,954
Macoupin		40,380	50,685
Morgan		32,636	34,420
Sangamon		61,195	91,024
Scott		10,304	10,067
Total		183,116	222,513
<i>Eighth Circuit.</i>			
Adams		61,888	64,588
Brown		11,951	10,397
Calhoun		7,652	8,610
Cass		15,963	17,372
Mason		16,067	17,377
Menard		13,120	12,796
Pike		31,000	28,622
Schuyler		16,013	14,852
Total		173,654	174,614
<i>Ninth Circuit.</i>			
Fulton		43,110	49,549
Hancock		31,907	30,638
Henderson		9,876	9,724
Knox		38,752	46,159
McDonough		27,467	26,887
Warren		21,281	23,313
Total		172,393	186,270
<i>Tenth Circuit.</i>			
Marshall		13,653	15,679
Peoria		70,378	100,255
Putman		4,730	7,561
Stark		9,982	10,098
Tazewell		29,556	34,027
Total		128,299	167,620
<i>Eleventh Circuit.</i>			
Ford		17,035	17,096
Livingston		38,455	40,465
Logan		25,489	30,216
McLean		63,036	68,008
Woodford		21,429	20,506
Total		165,444	176,291
<i>Twelfth Circuit.</i>			
Iroquois		35,167	35,543
Kankakee		28,732	40,752
Will		62,007	84,371
Total		125,906	160,666

TABLE 3.—*Population of Judicial Circuits—Concluded.*

<i>Thirteenth Circuit.</i>			
County.		1890.	1910.
Bureau		35,014	43,975
Grundy		21,024	24,162
LaSalle		80,798	90,132
Total		136,836	158,269
<i>Fourteenth Circuit.</i>			
Henry		33,338	41,736
Mercer		18,545	19,723
Rock Island		41,917	70,404
Whiteside		30,854	34,507
Total		124,654	166,370
<i>Fifteenth Circuit.</i>			
Carroll		18,320	18,035
Jo Daviess		25,101	22,657
Lee		26,187	27,750
Ogle		28,710	27,864
Stephenson		31,338	36,821
Total		129,656	133,127
<i>Sixteenth Circuit.</i>			
DeKalb		27,066	33,457
DuPage		22,551	33,432
Kane		65,061	91,862
Kendall		12,106	10,777
Total		126,784	169,528
<i>Seventeenth Circuit.</i>			
Boone		12,203	15,481
Lake		24,235	55,058
McHenry		26,114	32,509
Winnebago		39,938	63,153
Total		102,490	166,201
Cook		1,191,922	2,405,233
<i>Recapitulation.</i>			
No. of Circuit.		1890.	1910.
1		159,186	210,438
2		196,813	233,547
3		207,444	310,267
4		211,162	244,472
5		144,127	177,647
6		146,465	175,518
7		183,116	222,513
8		173,654	174,614
9		172,393	186,270
10		128,299	167,620
11		165,444	176,291
12		125,906	160,666
13		136,836	158,269
14		124,654	166,370
15		129,656	133,127
16		126,784	169,528
17		102,490	166,201
Cook County		1,191,922	2,405,233
Total		3,826,351	5,638,591

TABLE 4. *Statement Showing Area and Population of the Counties of Illinois, Together with Salaries of State's Attorneys and County and Probate Judges.*

County.	Area Sq. Miles.	Popu- lation. ¹	Salary of State's Atty.	Salary of County Judge.	Salary of Probate Judge.
Adams	842	64,588	\$ 5,000.00	\$ 2,500.00	.....
Alexander	226	22,741	2,500.00	2,500.00	.....
Bond	388	17,075	2,100.00	700.00	.....
Boone	293	15,481	1,900.00	1,500.00	.....
Brown	297	10,397	1,400.00	1,000.00	.....
Bureau	881	43,975	3,900.00	2,500.00	.....
Calhoun	256	8,610	1,300.00	400.00	.....
Carroll	453	18,035	2,200.00	1,250.00	.....
Cass	371	17,372	2,100.00	2,000.00	.....
Champaign	1,043	51,829	5,000.00	3,000.00	.....
Christian	700	34,594	3,900.00	1,700.00	.....
Clark	493	23,517	2,500.00	1,200.00	.....
Clay	462	18,661	2,300.00	900.00	.....
Clinton	483	22,832	2,500.00	1,000.00	.....
Coles	525	34,517	3,900.00	1,500.00	.....
Cook	933	2,405,233	12,000.00	10,000.00	\$10,000.00
Crawford	453	26,281	2,500.00	1,500.00	.....
Cumberland	353	14,281	1,800.00	800.00	.....
DeKalb	638	33,457	3,900.00	2,350.00	.....
DeWitt	415	18,906	2,300.00	1,500.00	.....
Douglas	417	19,591	2,400.00	1,500.00	.....
DuPage	345	33,432	3,900.00	2,400.00	.....
Edgar	621	27,336	2,500.00	2,000.00	.....
Edwards	238	10,049	1,400.00	600.00	.....
Effingham	511	20,055	2,400.00	1,000.00	.....
Fayette	729	28,075	2,500.00	1,500.00	.....
Ford	500	17,096	2,100.00	1,200.00	.....
Franklin	445	25,943	2,500.00	1,200.00	.....
Fulton	884	49,549	3,900.00	2,500.00	.....
Gallatin	338	14,628	1,900.00	720.00	.....
Greene	515	22,363	2,500.00	1,500.00	.....
Grundy	433	24,162	2,500.00	1,600.00	.....
Hamilton	455	18,227	2,200.00	900.00	.....
Hancock	780	30,638	3,900.00	1,800.00	.....
Hardin	185	7,015	1,100.00	300.00	.....
Henderson	376	9,724	1,400.00	1,400.00	.....
Henry	824	41,736	3,900.00	2,200.00	.....
Iroquois	1,121	35,543	3,900.00	2,500.00	.....
Jackson	588	35,143	3,900.00	1,500.00	.....
Jasper	508	18,157	2,200.00	1,000.00	.....
Jefferson	603	29,111	2,500.00	1,100.00	.....
Jersey	367	13,954	1,800.00	1,400.00	.....
Jo Daviess	623	22,657	2,500.00	1,400.00	.....
Johnson	348	14,331	1,800.00	600.00	.....
Kane	527	91,862	5,000.00	3,000.00	2,350.00
Kankakee	668	40,752	3,900.00	2,400.00	.....
Kendall	324	10,777	1,500.00	1,500.00	.....
Knox	711	46,159	3,900.00	2,500.00	.....
Lake	455	55,058	5,000.00	3,000.00	.....
La Salle	1,146	90,132	5,000.00	2,500.00	3,500.00
Lawrence	358	22,661	2,500.00	1,350.00	.....
Lee	742	27,750	2,500.00	2,000.00	.....
Livingston	1,043	40,465	3,900.00	2,500.00	.....
Logan	617	30,216	3,900.00	2,000.00	.....
McDonough	588	26,887	2,500.00	1,800.00	.....
McHenry	620	32,509	3,900.00	2,500.00	.....
McLean	1,191	68,008	5,000.00	2,700.00	.....
Macon	585	54,186	5,000.00	3,000.00	.....
Macoupin	860	50,685	3,900.00	1,500.00	.....
Madison	737	89,847	5,000.00	2,200.00	2,200.00
Marion	569	35,094	3,900.00	1,800.00	.....
Marshall	396	15,679	2,000.00	1,400.00	.....
Mason	555	17,377	2,100.00	1,500.00	.....
Massac	240	14,200	1,800.00	900.00	.....
Menard	317	12,796	1,700.00	1,000.00	.....
Mercer	540	19,723	2,400.00	2,000.00	.....
Monroe	389	13,508	1,800.00	1,200.00	.....
Montgomery	689	35,311	3,900.00	1,750.00	.....
Morgan	576	34,420	3,900.00	2,400.00	.....
Moultrie	338	14,630	1,900.00	1,200.00	.....
Ogle	756	27,864	2,500.00	3,000.00	.....

TABLE 4.—*Area and Population of Counties with Salaries of State's Attorneys, County and Probate Judges—Concluded.*

County.	Area Sq. Miles.	Popu- lation. ¹	Salary of State's Atty.	Salary of County Judge.	Salary of Probate Judge.
Peoria	636	100,255	6,400.00	3,000.00	3,000.00
Perry	451	22,088	2,500.00	1,200.00	.....
Piatt	451	16,376	2,000.00	1,500.00	.....
Pike	786	28,622	2,500.00	1,700.00	.....
Pope	385	11,215	1,500.00	800.00	.....
Pulaski	190	15,650	2,000.00	1,200.00	.....
Putnam	173	7,561	1,200.00	500.00	.....
Randolph	587	29,120	2,500.00	1,600.00	.....
Richland	357	15,970	2,000.00	1,000.00	.....
Rock Island	424	70,404	5,000.00	3,000.00	2,500.00
St. Clair	663	119,870	6,400.00	2,500.00	2,250.00
Saline	399	30,204	3,900.00	1,800.00	.....
Sangamon	876	91,024	5,000.00	3,500.00	3,500.00
Schuyler	432	14,852	1,900.00	1,100.00	.....
Scott	249	10,067	1,400.00	1,000.00	.....
Shelby	772	31,693	3,900.00	2,250.00	.....
Stark	290	10,098	1,400.00	1,500.00	.....
Stephenson	559	36,821	3,900.00	1,800.00	.....
Tazewell	647	34,027	3,900.00	2,000.00	.....
Union	403	21,856	2,500.00	1,200.00	.....
Vermilion	921	77,996	5,000.00	3,000.00	3,000.00
Wabash	220	14,913	1,900.00	700.00	.....
Warren	546	23,313	2,500.00	1,900.00	.....
Washington	561	18,759	2,300.00	1,200.00	.....
Wayne	733	25,697	2,500.00	1,200.00	.....
White	507	23,052	2,500.00	1,000.00	.....
Whiteside	679	34,507	3,900.00	2,500.00	.....
Will	844	84,371	5,000.00	3,500.00	3,500.00
Williamson	449	45,098	3,900.00	1,800.00	.....
Winnebago	529	63,153	5,000.00	3,000.00	.....
Woodford	528	20,506	2,500.00	1,800.00	.....
Total	56,043	5,638,533	315,700.00	182,970.00	35,700.00

¹ Census of 1910.TABLE 5. *City Courts.*

Name of City Court.	Population ¹ of city (1910).	Year of organiza- tion of court.	Salary of Judge. (2 judges)
Alton	17,528	1859	\$3,000.00
Aurora	29,807	1857	3,000.00
Beardstown	6,107	1911	1,500.00
Benton	2,675	1915	1,500.00
Canton	10,453	1889	2,000.00
Carbondale	5,411	1916	1,500.00
Charleston	5,884	1906	1,500.00
Chicago Heights	14,525	1903	2,000.00
De Kalb	8,102	1911	2,000.00
DuQuoin	5,454	1909	1,500.00
East St. Louis ²	58,547	1874	4,000.00
Elgin	25,976	1857	3,000.00
Granite City	9,903	1910	2,000.00
Harrisburg	5,309	1910	1,500.00
Herrin	6,861	1910	2,000.00
Johnson City	3,248	1915	1,500.00
Kewanee	9,307	1909	2,000.00
Litchfield	5,971	1898	1,500.00
Macomb	5,774	1910	1,500.00
Marion	7,093	1910	1,500.00
Mattoon	11,456	1898	2,000.00

¹ The figures here given are of the 1910 census. The population of many of these cities, particularly those in mining regions, has increased rapidly since that time. This fact explains the disproportion between the population figures and the salaries of the judges.

² The city court at East St. Louis has two judges.

TABLE 5.—City Courts—Concluded.

Name of City Court.	Population ¹ of city (1910).	Year of organiza- tion of court.	Salary of Judge.
Moline	24,199	1915	3,000.00
Pana	6,055	1906	1,500.00
Spring Valley	7,035	1912	1,500.00
Sterling	7,467	1910	1,500.00
West Frankfort	2,111	1915	2,000.00
Zion ³	4,789	1903	500.00
Total			\$56,000.00

³ The salary of the judge of the city court at Zion City is paid from the city treasury; that of all other city judges is paid from the state treasury.

TABLE 6. Service of down-state Judges in Cook County.

(a) Extent of Service of Down-State Judges in the Superior Court of Cook County During the Years 1915, 1916, 1917, 1918 and 1919.

Judge.	Court.	1915 No. of days.	1916 No. of days.	1917 No. of days.	1918 No. of days.	1919 No. of days.
H. Sterling Pomeroy...	City Court Kewanee...	157	99	...	...	...
Mazzini Slusser.....	16th Circuit	85	69	31	11	...
Clinton F. Irwin.....	16th Circuit	78	82	55	33	...
Harry G. Moran.....	City Court Canton....	...	65	...	...	...
Samuel C. Stough.....	13th Circuit	18	47	48	32	...
Oscar E. Heard.....	15th Circuit	32	86	...	...	...
James S. Baume.....	15th Circuit	...	29	1	...	...
E. M. Mangan.....	City Court Aurora....	70	...	...	...	...
F. E. Shopen.....	City Court Elgin....	22	...	...	...	...
John A. Dowdall.....	City Court DeKalb....	7	...	...	...	...
Total		469	477	135	76	...

(b) Extent of Service of Down-State Judges in the Circuit Court of Chicago During the Years 1916, 1917, 1918 and 1919.

Judge.	Court.	1916 No. of days.	1917 No. of days.	1918 No. of days.	1919 No. of days.
James S. Baume.....	15th Circuit	44	6	...	...
B. S. Bell.....	Probate Court Rock Island..	11	...	...	...
Louis Bernreuter.....	3rd Circuit	...	...	12	...
C. H. Bowles.....	City Court Chicago Heights..	...	142	163	40
H. R. Dial.....	City Court West Frankfort..	27	...	...	...
J. C. Eagleton.....	2nd Circuit	...	16	32	...
Dean Franklin.....	City Court Macomb.....	100	26	...	...
D. T. Hartwell.....	1st Circuit	...	22	13	1
Oscar E. Heard.....	15th Circuit	47	67	76	70
C. F. Irwin.....	16th Circuit	...	...	...	35
D. W. Maddox.....	City Court Litchfield.....	40	...	...	...
E. M. Mangan.....	City Court Aurora.....	4	60	140	142
J. H. Marshall.....	5th Circuit	...	8	22	23
Chas. W. Miller.....	2nd Circuit	...	...	...	10
Harry C. Moran.....	City Court Canton.....	...	16	...	...
A. D. Morgan.....	City Court Herrin.....	...	...	...	33
A. A. Partlow.....	5th Circuit	...	...	...	17
H. S. Pomeroy.....	City Court Kewanee.....	101	159	149	24
G. A. Sentel.....	6th Circuit	...	...	...	28
M. Slusser.....	16th Circuit	...	...	...	43
Samuel C. Stough.....	13th Circuit	7	129	118	157
Sain Welty.....	11th Circuit	...	...	17	...

TABLE 6.—*Service of down-state Judges in Cook County—Concluded.*(c) *Extent of Service of Down-State Judges in the County Court of Cook County From January 1, 1916 to March 29, 1919.*

Judge.	Court.	1916 No. of days.	1917 No. of days.	1918 No. of days.	1919 No. of days.
John H. Williams.....	Probate Court Kane County..	296	278	168	194
S. N. Hoover.....	County Court Kane County..	211	212	130	164
John J. Cooke.....	City Court Beardstown.....	157	185	266	148
David T. Smiley.....	County Court Lake County..	19	30	8	...
Arthur J. Grady.....	County Court Carroll County	12	...	...	...
Roscoe J. Carnahan.....	County Court Stephenson Co.	62	13	3	...
William L. Pond.....	County Court DeKalb County	82	174	37	14
Wm. C. DeWolf, Jr.....	County Court Boone County..	14	...	...	...
Benjamin Bell.....	County Court Rock Island Co.	26	5	...	...
A. D. Webb.....	County Court Jefferson Co...	...	18	...	...
William E. Thomson.....	County Court Morgan County	...	...	5	...
Harry C. Stuttle.....	City Court Litchfield.....	...	...	17	23
S. L. Rathje.....	County Court DuPage County	...	...	...	17
F. J. Campbell.....	County Court Jo Daviess Co.	...	...	...	19
A. L. Spiller.....	County Court Jackson County	...	...	...	17
A. J. Steidley.....	County Court Shelby County.	...	...	...	5
James H. Ragsdale ..	County Court Montgomery Co.	...	...	...	12
Harry C. Moran.....	City Court Canton.....	...	...	...	22
Totals		879	915	634	635

(d) *Extent of Service of Down-State Judges in the Municipal Court of Chicago During the Years 1916, 1917, 1918 and 1919.*

Judge.	Court.	1916 No. of days.	1917 No. of days.	1918 No. of days.	1919 No. of days.
Chas. H. Bowles.....	City Court Chicago Heights..	194	11	...	...
F. J. Campbell.....	County Judge, Jo Daviess Co.	16	27	76	58
Frederick C. Hill.....	County Judge, DeWitt Co...	85	5	...	...
Harry C. Moran.....	City Court, Canton.....	118	55	74	131
Perry L. Person.....	County Judge, Lake County.	20	2	...	3
Rufus F. Robinson.....	County Judge, Henderson Co.	131	88	6	...
P. C. Walters.....	County Judge, Edwards Co...	93	...	...	...
D. H. Wamsley.....	County Judge, Douglas Co...	27	51	5	...
Nels A. Larson.....	County Judge Rock Island Co.	...	28	...	23
Harry C. McEwen.....	City Court, DeKalb.....	...	30	...	...
J. B. Crabtree.....	County Judge, Lee County...	...	...	...	16
F. E. Reed.....	County Judge, Ogle County.	...	...	...	21
W. H. Orr.....	County Judge, Hammond Co.	...	...	...	34
T. A. Graham.....	County Judge, Vermilion Co.	...	...	...	6
Totals		684	297	161	292

TABLE 7. *Summary of Work of Appellate Courts, 1910-1918, Based on Analysis of Appellate Court Reports.*Vols. 152 to 212, inclusive.
Action by Appellate Courts.

	1910-1918.	Affirmed.	Reversed.	Other- wise dis- posed of
Cases coming from Municipal Court of Chicago...		2,026	1,009	29
Cases coming from County Courts.....		282	225	14
Cases coming from Probate Courts.....		4	.....	..
Cases coming from City Courts.....		150	153	3
Cases coming from Circuit Courts.....		2,826	1,792	87
Cases coming from Superior Court of Cook County		846	501	27
Cases coming from Criminal Court of Cook Co....		29	12	1
Totals 10,016 ^a		6,163	3,692	161

TABLE 7.—*Work of Appellate Courts—Concluded.*

Total cases by appellate districts:		
First District	6,231	
Second District	1,264	
Third District	1,438	
Fourth District	1,075	
		*10,008

* The discrepancy in totals is due to an error in analyzing the cases by districts.

TABLE 8. *Analysis of Work of the Illinois Supreme Court, Based on Examination of Supreme Court Reports, Vols. 243 to 289.*

(a)

Recapitulation.	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	Total
Opinions filed:											
Original Jurisdiction	11	8	14	6	13	8	20	12	13	6	111
Appeals direct from Trial Courts	273	304	293	280	312	308	342	380	271	213	2,976
Appeals from Appellate Courts	77	66	65	83	90	76	85	92	89	69	792
Total	361	378	372	369	415	392	447	484	373	288	3,879
Total cases filed	555	517	644	608	605	637	677	701	628	600	6,172

Total cases filed during calender years 1910-1919..... 6,172

Petitions for certiorari denied and pending..... 1,191

Balance..... 4,981

Opinions filed during calendar years 1910-1919 and analysed..... 3,879

Balance unaccounted for on basis of printed reports..... 1,102

Per cent..... 22.1

(b)

ORIGINAL PROCEEDINGS In the Supreme Court.	1910	1911	1912	1913	1914	1915	1916	1917	1918	1919	Total
Habeas corpus.....	1			1			2	1	1		6
Mandamus.....	3	1	10	2	7	7	11	5	8	2	56
Revenue.....	4	5	3	1	1		1	2	2	1	20
Disbarment, etc.....	3	2	1	2	5	1	6	4	2	3	29
Total	11	8	14	6	13	8	20	12	13	6	111

(d)

(e)

"Denied" includes petitions dismissed and stricken from the files.

"Pending" petitions are those filed at the current December Term, now in session. They have not been passed upon by the court.

Figures relate to the filing of opinions ultimately deciding the cases.

CONSTITUTIONAL CONVENTION

BULLETIN No. 11

Local Governments IN Chicago and Cook County



Compiled and Published by the
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I. SUMMARY.

This pamphlet deals with the problem of local government in Chicago and Cook County, with special reference to proposals for a consolidated and simplified system. It includes a descriptive analysis of the present local authorities, a discussion of proposals for consolidation and constitutional changes needed to make this possible, and a brief account of partially consolidated arrangements in other places.

Other governmental problems of special importance to Chicago and Cook County will be considered in other pamphlets: the question of representation in the general assembly in the pamphlet on the Legislative Department; the Cook County courts in the pamphlet on the Judicial Department. Pamphlets on municipal home rule and local government will also present general problems which will affect Chicago and Cook County as well as other parts of the state.

Local Governments in Cook County. The local governments of Chicago and Cook County present, not only the most important group of local governments in Illinois, but also probably the most complex array of local authorities in the world. Within the city of Chicago there are 38 distinct local governments; and in the county as a whole there are 392 separate agencies of local government.

Cook County was established in 1831. Chicago was incorporated as a town in 1833, and as a city in 1837; and its area has been increased from time to time by annexation. After 1840, school districts were formed; and after 1849 townships. Other municipalities were incorporated, at first slowly, but more rapidly after 1860. Altogether about 90 incorporated towns, villages and cities have been established in Cook County, some of which have been absorbed by annexation. Since 1869, additional park, high school and drainage districts, library boards, the sanitary district, and the forest preserve district have been established.

As first organized, county affairs in Cook County were managed by an elected board of three county commissioners, a sheriff and a coroner. Other county officers were appointed; but later some of these were made elective. Under the constitution of 1848, the number of elective county officers was increased; and after the adoption of township organization a board of supervisors was established. This consisted at first of 39 members, 15 of whom

were elected by the towns in Chicago. By 1870 the county board consisted of 54 members, 20 elected by wards from the city of Chicago, which had about seven-eighths of the population.

The constitution of 1870 provided for a board of county commissioners for Cook County, 10 elected from Chicago and 5 from the rest of the county. The powers of this board are restricted by constitutional and statutory provisions as to other elective county officers, and there is no central controlling or co-ordinating authority for the county government as a whole. By statute, the president of the board has a veto power and some power of appointment. The board of county commissioners also acts as a board of forest preserve commissioners.

The number of elective county officers was increased by the constitution of 1870, which also contained provisions for a series of special courts in Cook County. The number of judges in these courts has been increased from time to time; an appellate court and three branches have been established in Cook County; and in 1905 a municipal court for Chicago.

There are now 79 elective officers for Cook County, including 40 judges of the circuit and supreme courts, 15 county commissioners, court clerks and other county officers. The total regular staff of the county offices and institutions aggregates approximately 3,000 besides extra employes in the assessment and collection of taxes.

Municipal government in Chicago was carried on for forty years under special charters granted by the general assembly, and frequently amended. In 1875 the city voted to adopt the cities and villages act of 1872. This has been frequently amended, and a number of optional laws have also been adopted by Chicago. Since the adoption of the constitutional amendment of 1904, a number of special acts relating to Chicago have been passed, subject to local referendum.

The organization of the city government proper is comparatively simple. The mayor is elected for a four-year term, the city clerk and city treasurer for two-year terms; there are 70 aldermen, two elected from each ward for two-year terms. There is also a municipal court, with a chief justice, 30 associate justices, a bailiff and a clerk, elected for six-year terms. There are 106 elective city officers; each voter may vote for 38, for a maximum of 5 at city elections in the spring and for from 10 to 13 municipal court officers at the November elections.

Connected with the city government are several other agencies, largely independent; the board of education of 11 members, the library board of 7 members, and the municipal tuberculosis sanitarium with a board of 3 members. The members of these bodies are appointed by the mayor, subject to confirmation by the council.

There are also a considerable number of other local governing bodies exercising jurisdiction within the limits of the city. The whole city is within the jurisdiction of the county and forest pre-

serve district, and also of the sanitary district of Chicago. There are 8 towns entirely within the city, and 6 others partly within and partly outside. There are 3 large and 14 small park districts wholly within the city, and two other park districts partly within the city.

The house of correction, the board of election commissioners and the boards of trustees for pension funds have peculiar and special positions.

The sanitary district of Chicago now includes an area of nearly 400 square miles, about twice that of the city of Chicago, with 97 per cent of the population and 98 per cent of the assessed valuation of Cook County. Its affairs are managed by a board of 9 trustees, 3 elected every second year, one of whom is elected as President. The district is a distinct municipal corporation, with its own taxing and borrowing powers; and during its existence has expended a total of \$100,000,000. Of this sum, about \$50,000,000 has been expended for the construction of drainage canals and works and the development of electric power.

Within the sanitary district and outside the city of Chicago, there are 162 separate taxing bodies, including 5 cities, 40 villages, 9 park districts, 12 towns (6 wholly within the district and 6 partly within), 66 school districts (47 wholly within and 19 partly within) 10 high school districts, and part of the non-high school district, 15 library boards, and 4 drainage districts.

Of the 38 towns in Cook County, 8 are entirely within the city of Chicago; 10 others are entirely within the Sanitary District; 9 more are partly within and partly outside the Sanitary District, and eleven are entirely outside that district. The towns wholly in Chicago are distinctively urban in character; the other towns wholly within the Sanitary District may be classed as suburban; of those partly in and partly outside of the Sanitary District, some are suburban and a few are largely agricultural; those outside the Sanitary District are mainly agricultural (except Bloom township, which includes the industrial city of Chicago Heights).

The 8 towns wholly within Chicago have practically no separate town governments. Most of the other towns elect the usual town officers; but there are exceptional arrangements in Evanston and several other suburban towns co-terminous with a city or village. Altogether there are 402 elective town officers in the county.

There are 9 cities, 67 villages and 2 incorporated towns in Cook County, 46 of these 78 municipalities being within the Sanitary District. Two cities (Harvey and Elgin) and two villages (Forest Park and Palos Park) have adopted the commission form of government. The two incorporated towns (Cicero and Palatine) and the village of Winnetka are still operating under special charters, passed before 1870. The other cities and villages are under the general provisions of the Cities and Villages Act, supplemented in the case of Chicago by some special legislation.

Excluding Chicago and Elgin (only a small part of which is in Cook County), there are 118 elective city officials and about 608 elective village officers in Cook County. Of these, 88 city officials and 352

village officers are elected by municipalities within the Sanitary District.

In addition to the forest preserve district, comprising the whole county, there are 28 distinct park authorities in Cook County, all but two of which are within the Sanitary District. There are 144 park commissioners, 125 of whom are elective officers. There are wide variations in the tax rates and revenues of these park districts; and as a result an inequitable distribution of park facilities.

There are 180 school districts in Cook County outside of Chicago. Of these, 47 are wholly within the Sanitary District, 19 are partly in that district, and 114 are entirely outside. There are 15 high school districts in the county, and the remainder of the county forms a non-high school district. Many of the school and high school districts cross township lines. There are altogether 801 elective district school officers in the county. School tax rates in the suburban cities and villages are much higher than in Chicago.

There are 21 public libraries in Cook County, with a total of 144 members of the library boards. Of these, the 90 members of the 15 village library boards are elected.

It is difficult to obtain a complete list of drainage districts, but information has been secured of 27 such districts in Cook County. Four of these are within the Sanitary District of Chicago.

In addition to the local governments, there are 10 congressional districts and 19 senatorial districts in Cook County; and 35 wards in the city of Chicago. These various districts for election purposes do not correspond with each other; and add further to the complexities of the governmental situation.

Combining the various local districts with elective officers, there is an aggregate of 2557 public officials voted for in Cook County, of which 417 are voted for in Chicago and 1640 within the Sanitary District. Each male elector in Cook County is expected to vote for from 172 to 197 different officials in a brief series of years. At the November election in 1916, each male elector in Chicago was called on to vote for 72 officials, and in other parts of the county for 61 officials.

Proposals for unification. Various plans for a more unified system of local government in Chicago have been presented from time to time. In the constitutional convention of 1870, a provision authorizing any city of over 200,000 population to be organized into a separate county was at one time agreed to, but was later stricken out, at the request of the Cook County members. After 1890, plans for consolidation were advocated in Chicago. A proposed constitutional amendment for this purpose was introduced in the general assembly of 1899; and in 1903 a proposed amendment was submitted by the general assembly, and adopted by popular vote in 1904 as Section 34 of Article IV of the constitution. This authorized special legislation for Chicago, subject to a local referendum, and the consolidation of local governments entirely within the city; but did not provide for the con-

solidation of the county or the sanitary district government with the city.

Under the amendment of 1904, a comprehensive city charter was prepared by a local charter convention in Chicago; but this was amended in important respects by the general assembly; and the amended charter was defeated at the local referendum. In 1915 a less comprehensive consolidation act was passed by the general assembly; but this also failed at the local referendum, mainly on account of temporary local political conditions. This act may be again submitted to local vote; but it is only a partial solution of the problem.

In recent years a series of reports on the complex machinery of local government in Chicago and plans for unification has been published by the Chicago Bureau of Public Efficiency. In these the defects of the existing arrangements have been discussed, including useless overhead expenses, enormous election costs, cumbersome assessing machinery, the cost of the courts, expensive law departments, the purchase of supplies and materials; rent, light and telephone service; the advantages of park consolidation; the sanitary district, and other economies. The direct money savings have been estimated at \$3,200,000 a year; and in addition more important results could be secured by greater efficiency and better plans for future development.

Several alternative plans have been suggested as a basis for unification and consolidation. In addition to the partial measures possible under the constitutional amendment of 1904, may be noted proposals to organize the city of Chicago as a separate county, or to establish a consolidated city and county for an area such as that of the sanitary district, including most of the suburban communities adjacent to the city. Under either of these plans, the remainder of Cook County might be organized as one or more new counties, or attached to neighboring counties.

Any of these plans will give rise to a number of problems of adjustment with the present county of Cook and communities now outside of Chicago. Some of these problems and suggested solutions are considered in the pamphlet. But the problem for the constitutional convention will be, not to solve the local difficulties, but to frame constitutional provisions under which the local questions may be worked out by the communities themselves.

A large number of provisions in various articles of the present state constitution operate to prevent any comprehensive unification of local government in Chicago. Some of these may be removed by changes made on account of general conditions throughout the state. But it is probable that consideration will be needed for provisions specially applicable to Chicago and Cook County.

City-county consolidation elsewhere. In a number of other states, provisions have been made for the consolidation, to some extent, of city and county government for large cities; and in several Euro-

pean countries there is likewise consolidated local governments for larger cities.

New York City includes five counties. In Philadelphia and San Francisco the city and county are identical in area. Baltimore and St. Louis combine city and county functions. Boston includes most of Suffolk County. In all of these cases, the city government includes some county functions and absorbs some county officers. In Denver, city and county government have been more thoroughly consolidated. In the District of Columbia, a single government exercises some of the functions elsewhere divided between the city, county and state.

In Virginia, all cities are excluded from the counties; and the city government provides for county functions. Several state constitutions authorize the larger cities to be organized as separate counties; in Michigan and Missouri, cities over 100,000; in Minnesota, cities over 20,000. The California constitution contains a general provision authorizing city and county consolidation, as well as special provisions for San Francisco and some other counties.

Plans for city-county consolidation have been actively urged in recent years for a number of larger American cities. Proposed constitutional amendments for this purpose have been presented in Ohio and Oregon; and definite proposals have been urged in Los Angeles and Alameda counties, California.

In England, municipalities of over 50,000 population are regularly organized as county boroughs. In Prussia, most cities of over 25,000 are classed as *Kreis-stadte*, combining the functions of the city and the local district known as the circle; and there are somewhat similar arrangements in Bavaria. Several Swiss cantons are predominantly urban; and in the Basel-stadt the municipal and cantonal functions are combined.

In Paris, the municipal government is partly combined with that of the Department of the Seine. In that city, and also in Vienna, are permanent administrative districts within the city, which may suggest methods for preserving the identity of local districts in the suburbs of Chicago.

In Appendix No. 4 will be found a tentative proposal prepared by a special committee of the Chicago city council. It will be noted that this proposal relates primarily to municipal home rule, a subject dealt with in Bulletin No. 6 of this series. If the policy of municipal home rule is to be adopted, it would probably be made applicable to other cities as well as to Chicago, although some provisions relating specifically to Chicago might be necessary. Under the amendment of 1904 Chicago problems may now be dealt with by special legislation.





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City of Chicago

Prepared by

CHICAGO BUREAU OF PUBLIC ENGINEERING

1919

II. LOCAL GOVERNMENTS IN COOK COUNTY.

Introduction. Much the most important and most complex array of local governments in Illinois is that in Chicago and Cook County; and it has been said that probably no other community in the world presents a more confusing complexity. Within the City of Chicago there are no less than 38 distinct local governments, most of them independent of one another. Outside of the city and within the larger area of the Sanitary District of Chicago there are 162 other local governments. Beyond the Sanitary District there are 192 additional local governments within Cook County. Upon the map which faces this page will be found an outline of the local areas which are most important from the standpoint of the problem of consolidation. This map is printed here through the courtesy of the Chicago Bureau of Public Efficiency. In the aggregate there are 392 separate agencies of local government in Cook County, as shown in the table below:

Local Governments in Chicago and Cook County.

Class.	Within Chicago.	Additional in Sanitary District outside Chicago.	Additional in Cook County outside San. District.	Total in Cook County Outside Chicago.	Grand Total in County.
Cook County ^a	1	....	....	....	1
Forest Preserve District.....	1	....	....	....	1
Sanitary District of Chicago...	1	....	....	....	1
Cities	1	5	b3	b8	b9
Towns	c14	d13	e11	f24	38
Villages	...	g40	h29	i69	469
Park Districts	j17	k9	2	l11	28
Library Boards	1	15	15	120	121
School Districts	1	m66	n114	180	181
High School Districts.....	...	o11	p5	16	16
Drainage Districts	...	4	23	27	27
Municipal Tuberculosis Sanitarium	1	....	....	....	1
Total	38	q162	192	355	q392

^a—Cook County and the Forest Preserve District, which are co-extensive, extend beyond the limits of Chicago, although not shown in columns two, three, and four. The area of Chicago is 200 square miles; of the Sanitary District, 390 square miles; and of Cook County, 993 square miles.

^b—Includes part of Elgin, which is largely in Kane County.

^c—Eight wholly within, and 6 partly within Chicago. (Three of the latter are partly outside the Sanitary District).

^d—Includes 6 partly outside the Sanitary District.

^e—Does not include 9 partly within the Sanitary District.

^f—Does not include 6 partly within Chicago.

^g—Includes 5 partly outside the Sanitary District, and Cicero, which is also counted as a town.

i—Includes Cicero, which is also counted as a town, and 3 partly outside Cook County.

j—Includes 2 partly outside Chicago.

k—Does not include 2 partly in Chicago.

l—Includes 2, (Elgin and Hinsdale) partly outside Cook County.

m—Includes 19 partly outside the Sanitary District.

n—Does not include 19 partly within the Sanitary District.

o—Includes 4 and the non-high school district, which are partly outside the Sanitary District.

p—Does not include 4 and the non-high school district, which are partly within the Sanitary District.

q—Cicero, included both as a town and a village, is counted only once in the totals.

h—Does not include 5 partly within the Sanitary District; includes 3 partly outside Cook County.

This table shows the number of distinct governing and taxing authorities, each composed of a varying number of officials and supervising a larger number of subordinate officials and employees.

Before examining more closely this aggregate of existing local agencies, it may be well to note briefly some of the principal steps in their development.

Cook County, the oldest of the local government agencies, was established in 1831. It included at that time, not only the present area of the county, but also the territory of Lake and Du Page Counties, the northern half of Will County, and a small portion of what is now in McHenry County. In 1836 Will and McHenry counties were organized, the latter including the present area of Lake County; and in 1839 Du Page County was organized; and Cook County was reduced to the present limits.

The town of Chicago was incorporated in 1833 and four years later it received its first city charter with enlarged limits. The area of the city has been enlarged from time to time by annexations, at first of territory not previously incorporated, but since 1889 largely by the absorption of neighboring villages, several townships and the city of Lake View.

The school laws of 1841 and 1845 had provided for the formation of school districts in the townships outside of the city. In 1849, Cook County voted, with other northern counties, to adopt the new system of township organization. The townships were superimposed on the former governments, the city of Chicago falling within three townships. Several new townships have been organized within those first established.

While Blue Island had been incorporated in 1843 and Evanston in 1857, there was little tendency to establish other incorporated municipalities until the decade before 1870. But by the latter year, ten additional suburban municipalities had been organized, including the towns of Lake View, Hyde Park and Jefferson, and the villages of Glencoe and Winnetka. After 1870 the formation of villages proceeded more rapidly: 10 more were organized before 1880, and 10 others before 1890. Since the latter date, the process has been still more rapid. 26 villages were established from 1890 to 1899, 14 in the following decade, and 15 since 1910. A number of other villages appear to have existed for which no record is available. Altogether there has been about 90 incorporated towns, villages and cities established within Cook County.

The number of cities and villages in the county has been somewhat reduced by annexations to the city of Chicago. The most important case was in 1889 when the city of Lake View, the village of Hyde Park, and the towns of Jefferson and Lake were annexed, more than trebling the area of the city. In addition about 10 villages have been annexed from time to time, besides other territory.

But this has been counterbalanced by the creation of other local agencies. Before 1870 three park districts were established, covering the city of Chicago and neighboring territory; and these separate park districts have continued since the territory has been added to the city. Numerous other smaller park districts have been established more recently, under the general park laws, 14 within the city of Chicago, and 11 in the county outside of the city.

Another agency of a different type is the Sanitary District of Chicago organized in 1890 for the construction of the sanitary and ship canal, and including the city of Chicago and other territory in Cook County. The area of this district has been extended from time to time; and is now approximately 390 square miles, or nearly twice the area of the City of Chicago and over two-fifths of the total area of Cook County.

In addition to the Chicago board of education and library board, additional school districts, high school districts, library boards and local drainage districts have been formed outside of the city. Both city and county are also divided into legislative and congressional districts; and for convenience in elections, into 2,466 election precincts. The city has also 35 wards for the election of aldermen.

Cook county. The territory now forming Cook County was included in or attached to earlier counties in the Northwest Territory and in Indiana and Illinois.¹

In the official records of these counties, the earliest mention of matters relating to the present area of Cook County is in the Fulton County records for 1823. Orders of the county board are noted relating to taxes and to commissioning a justice of the peace at Chicago.

Section 8 of the act of 1825 creating Peoria County provides that all the territory north of that county and of the Illinois and Kankakee rivers shall be attached to Peoria County. Another act of the same date (January 13, 1825) defines the boundaries of several counties, and includes in Putnam County the area just noted; but there were no provisions for organizing the county government.

The records of Peoria county show the formation of a Chicago election precinct in 1826, and contain data relating to elections, taxes, marriage licenses and (in 1829) a tavern license at Chicago.²

¹ Knox County, Northwest Territory, 1790-1801; St. Clair County, Indiana Territory, 1801-1809; St. Clair County, Illinois Territory, 1809-1812; Madison County, Illinois Territory, 1812-1814; Edwards County, Illinois Territory, 1814-1816; Crawford County, Illinois Territory, 1816-1819; Clark County, State of Illinois, 1819-1821; Pike County, State of Illinois, 1821-1823; Fulton County, State of Illinois, 1823-1825; Peoria County, State of Illinois, 1825-1831. The southern part of what is now Cook County was attached to Edgar County from 1823-1825. Counties of Illinois (1906).

² F. O. Bennett: *Politics and Politicians of Chicago, Cook County and Illinois.*

Cook County was erected by act of January 15, 1831; and the first county officers were elected in March of that year. Within the limits as established since 1839 it has an area of 993 square miles. Only five other counties in Illinois have an area as large; while the average area of Illinois counties is about 540 square miles. The population of Cook County in 1910 was 2,405,233, about 40 per cent of the population of the state; and of this about 90 per cent was in the City of Chicago. The proportion of the county population in the city has declined to some extent in recent years, from 92.3 per cent in 1890 to 90.9 per cent in 1910. The assessed valuation of the city in 1918 was 92.5 per cent of the total assessed valuation of the county.

County officers. Under the first state constitution county affairs in Cook County, as in the other counties in the state, were managed by a board of three county commissioners, elected at large. The only other elective county officers were the sheriff and coroner. The county clerk and the treasurer (who acted as assessor) were appointed by the county commissioners; and the county recorder and circuit attorney were appointed by the Governor and Senate. Justices of the peace were elected by districts; and road supervisors and school trustees were appointed by the county commissioners. In 1837 the term of county commissioners was fixed at three years, and county treasurers and probate justices were made elective; and in 1845 county recorders and surveyors were made elective.

The constitution of 1848 continued the election of sheriff, and provided also for the election of county judges, state or county attorneys, court clerks and justices of the peace, and authorized an optional system of township government.

After the adoption of the second state constitution, Cook County, in 1849, like other northern counties, voted to establish the township system, with a board of supervisors elected by towns as the county board. As the towns were laid out, the city of Chicago was partly in the three towns of North Chicago, South Chicago and West Chicago, and the Cook County board of supervisors at first consisted of 39 members, 15 elected by the towns in Chicago and 24 by the other towns in the county. Some years later the Chicago members of the board were made elective by wards. By 1870 the county board consisted of 54 members, 20 from the city of Chicago and the remainder from the other towns in the county. By this time Chicago had about seven-eighths of the population and assessed valuation of the county; and the underrepresentation of the city in the county board led to maneuvers for political advantage, notably in the legislation of the 60's transferring the police from the city to the county.

In the constitutional convention of 1869-70 a provision was adopted (Section 7 of Article X) for a board of county commis-

sioners for Cook County, to consist of ten members elected from the city of Chicago and five from the towns outside the city.³

When considering the sections relating to the fees and salaries of county officers, a number of amendments were proposed to give the county board of Cook and other large counties full authority to control the compensation of county officers, so that this might be reduced. But none of these amendments was agreed to; and the provisions authorizing fees and salaries to be fixed by law and the number of deputies of county officers to be determined by the circuit court were adopted.⁴

In the revised County Law, passed in 1874, more definite provisions were made for the Cook County board of commissioners; and additional legislation in relation to this board has been enacted from time to time. In 1887, provision was made for the election by popular vote of one member of the board as president, who was given important powers of appointment and veto; and the same act also contained other provisions on financial matters. In 1893 the term of the commissioners was extended to 2 years; and in 1913 this was further extended to 4 years. In 1895 provisions for a county civil service commission were enacted.

The general powers and functions of the Cook County board of commissioners are the same as those of county boards in other counties in Illinois. They have charge of the county court house and other county buildings and property; they levy county taxes and have some authority over county finances; they control county institutions and county aid for the relief of the sick and indigent; and they have some powers in relation to state and county roads, bridges and drains. But their financial and other powers are closely restricted by constitutional and statutory provisions which make the other elective county officers practically independent both of the county board and of each other; and there is no central responsibility or control for county business as a whole.

Fees and salaries of most elective county officers and judges are regulated by state law, and some salaries are partly paid by the state. The county board may fix the compensation and expenses of other county officers and employees; but the number of deputies and assistants for most of the elective county officers is determined by the circuit court; and the employees of these offices are appointed by the elective officers without reference to the civil service rules.

The President of the County Board, with the consent of the board, appoints a superintendent of public service and some other county officers, as the warden of the county hospital, superintendent of county institutions and county agent. He also appoints, without action by the board, the civil service commissioners; and other appointments to positions in the county service under the

³ This provision was presented from the floor by Mr. Cameron of Cook County, at the end of the debate in committee of the whole on the article on counties. He set forth the unwieldy nature of the Cook County board of supervisors, and its election on political and party grounds; and that the country towns with an eighth of the population elected a majority of the board. The provision was then agreed to without debate or record vote. *Proceedings and Debates*, II, 1367.

⁴ *Proceedings and Debates*, II, 1509-1519.

direct control of the county board are made under civil service regulations.

Under the forest preserve act of 1913 a forest preserve district has been formed, comprising the whole of Cook County. Under the provisions of the act, the Cook County board of commissioners is ex-officio the board of forest preserve commissioners for this district.

The Cook County board of commissioners is also authorized to exercise the powers vested in townships for the eight townships wholly included within the city of Chicago; but their functions in this respect are insignificant.

The constitution of 1870 added to the number of elective county officers in all counties, and contained other provisions which have increased further the number of elective officers in Cook County. A state's attorney, county clerk and treasurer were required to be elected in each county, and the coroner was restored as a constitutional officer, in addition to the elective county officers named in the constitution of 1848. Provisions authorizing probate courts and county recorders in the larger counties and county superintendents of schools, with elective officers, have been applied in Cook and other counties. The special provisions relating to Cook County Courts require the election of additional judges and court clerks in this county.

In addition, other elective county officers have been established by statute, including the county surveyor and county superintendent of highways in all counties, and a board of assessors and a board of review in Cook County, as well as additional judges in the Circuit and Superior courts.

The County Clerk is also clerk of the county court and clerk of the county board; and in Cook County is ex-officio county comptroller and ex-officio town clerk and township assessor of each of the eight townships included wholly within the city of Chicago. The County Treasurer is ex-officio county collector, and in Cook County is also ex-officio collector and supervisor for each of the eight townships lying wholly within the city of Chicago.

Courts in Cook county. When Cook county was organized it was included in the fifth judicial circuit formed in 1829 and comprising all of the state north of the Illinois river. In 1837 it was transferred to the newly created seventh circuit. In 1841 separate circuit judges were abolished; and circuit courts were held by justices of the supreme court, additional justices being appointed. Both circuit and supreme court judges were at this time elected by the General Assembly.

The constitution of 1848 provided for nine or more judicial circuits in each of which one circuit judge should be elected by the people. Under these provisions Cook County formed part of a judicial circuit, the area of which was changed from time to time as

new circuits were created. In 1870 there were 30 circuits, Cook and Lake counties forming one circuit.

In the earlier days the only local courts below the circuit court were those held by the justices of the peace. The first Chicago city charter of 1837 provided for a mayor's court. The charter of 1851 provided that the mayor might hold a police court, and authorized the council to designate two or more justices of the peace. In 1853 a Recorder's Court was established for the City of Chicago, with criminal jurisdiction concurrent with the circuit court (except in cases of treason and murder), and with some minor civil jurisdiction. The judge and clerk of this court were elected by popular vote.

A county court of record was established in Cook County in 1845; and also in Jo Daviess County. In the schedule of the constitution of 1848, it was provided that these courts should continue until otherwise provided by law. In 1849, the name of these courts was changed to county courts of common pleas, to distinguish them from the general system of county courts established by the constitution of 1848. In 1859 the name of the Cook County court of common pleas was again changed to the superior court..

(The proposed constitution of 1862 provided for a supreme court, circuit courts, county courts and justices of the peace, and authorized four circuit judges for Cook County. There was no provision for other courts, and the adoption of this constitution would have required the consolidation of the courts in Cook County.)

In the constitutional convention of 1869-70 considerable attention was given to the courts of Cook County; and special provisions for this county were placed in the constitution. Early in the convention a resolution was introduced by Mr. Anthony relating to Cook County courts, similar to the provisions later reported by the committee on the judicial department and afterwards adopted. Soon after the report of the committee was submitted, a petition from Chicago lawyers was presented asking for the consolidation of the Cook County courts in one court. This was followed by a remonstrance from other Chicago lawyers, asking for the retention of the existing courts; and by other petitions and memorials on the subject.

When the article on the judicial department was taken up in committee of the whole, the question of the Cook County courts was debated at some length. Mr. Coolbaugh offered an amendment to the committee report, to provide for one court with the same number of judges as was proposed for the separate circuit and superior courts. This was supported by Mr. Cameron; but was opposed by Mr. Hitchcock (President of the Convention), Mr. Anthony, Mr. J. C. Haines (formerly mayor of Chicago) and, less emphatically, by Mr. Medill. All of the Cook County members favored an increased number of judges; and that the two courts should have equal and concurrent jurisdiction. The main argument for continuing the separate courts was that they were in existence, and that there was no complaint of the superior court which it was proposed to combine with the circuit court. It was also said that seven judges were too many for one court.

The proposal for a single consolidated court was defeated, by a vote of 17 to 32; and the provisions for separate courts were adopted, in accordance with the wishes of a majority of the Cook County members.⁵

The constitution of 1870 provided that Cook County shall be one judicial circuit, with five judges, including the judge of the recorder's court of Chicago, which was continued as the criminal court of Cook County, with the criminal jurisdiction of a circuit court. The superior court of Chicago was also continued as the superior court of Cook County. The general assembly was authorized to increase the number of judges with the increase of population.

By these provisions the previously existing courts were continued, with some extension of jurisdiction; and the former statutory superior and recorder's courts were given a constitutional basis, which prevented their abolition or consolidation.

With the increasing population of Cook County, additional judges have been authorized from time to time. In 1887, six additional circuit judges were provided; in 1893, three more; and in 1915, six more, making a total of twenty. An act of 1875 authorized additional superior court judges up to nine; in 1893 a further increase was authorized to twelve, in 1911, to eighteen; and in 1917 another increase to twenty. This makes a total of forty judges in these courts.

Additional circuit judges have been authorized just before the regular election for such judges, so the entire number is elected at one time. The additional superior court judges have been authorized in other years than that of the regular judicial elections, and in some cases the election of such judges has been designated for November. The superior court judges are thus elected in groups at different times.

The Criminal Court of Cook County is held by judges of the Circuit and Superior courts; and no judges of the Criminal Court are elected as such. A Juvenile Court has also been established, as a branch of the Circuit Court, presided over by one of the Circuit judges. Jury Commissioners are appointed by the judges of the several courts of record.

By the act of 1877 creating appellate courts, Cook County was created an appellate court district. No additional judges are elected for these courts; but three circuit or superior judges are assigned by the supreme court to duty in each appellate court. By act of 1897, branch appellate courts are authorized, with additional judges to be assigned by the supreme court, when necessary on account of accumulated cases; and 3 such branch courts have been constituted in Cook County. The clerk of the appellate court is elected for a term of six years.

Under section 28 of Article VI of the constitution of 1870, all justices of the peace in the city of Chicago were appointed by the Governor, with the advice and consent of the senate, on the recommendation of a majority of the judges of the circuit, superior and

⁵ Proceedings and Debates I, II, 96, 852, 965, 974, 1012, 1040, 1077, 1145-1163, 1472-1490.

county courts; and were removable by summary proceedings in the circuit or superior courts for extortion or other malfeasance.

Such justices of the peace, with a very limited jurisdiction and paid by fees, held the only courts for minor cases in Chicago until 1905. These arrangements worked badly. The various justices acted independently without administrative supervision; and their limited jurisdiction forced many cases into the higher courts.

After the adoption of the constitutional amendment of 1904 authorizing special legislation for Chicago, including laws relating to municipal courts, a municipal court was established, which took the place of justices of the peace in Chicago.

Elective County Officers. The total number of officers elected for Cook County is now 79 as follows:

President of the County Board (elected also as a commissioner).....	1
County Commissioners.....	15
States Attorney.....	1
Sheriff.....	1
County Treasurer.....	1
County Clerk and Clerk of County Court.....	1
County Recorder.....	1
Coroner	1
County Superintendent of Schools.....	1
County Surveyor.....	1
Board of Assessors.....	5
Board of Review.....	3
Judges of Circuit Court.....	20
Judges of Superior Court.....	20
Judge of Probate Court.....	1
Judge of County Court.....	1
Clerk of Circuit Court.....	1
Clerk of Superior Court.....	1
Clerk of Criminal Court.....	1
Clerk of Probate Court.....	1
Clerk of Appellate Court.....	1

79

Of these, twenty-seven are elected at the same time, at the November elections in the middle of a Governor's term; and twenty-one judges (20 circuit court and 1 superior court) are elected at the judicial elections in June of every sixth year.

As shown in the summary of Cook County appropriations for the year 1919, the total regular staff of the county offices in this county aggregates about 3,000 persons. In addition there is a considerable body of extra employees, especially in connection with the assessment and collection of taxes. The total salary appropriations amount to almost \$6,000,000 a year and the total appropriations for the county government, to about \$13,500,000.

City of Chicago. Under acts of Congress and the state legislature, passed in 1829, the town of Chicago was first laid out and the plat filed on August 4, 1830. On December 4, 1829, the first trustees of the school section were appointed. In 1833 the town was incorporated under the general town law; and several special acts of the legislature relating to the town of Chicago were passed during the next four years.

In 1837, Chicago was incorporated as a city by special act of the legislature. The first city charter was prepared by a local committee and approved at a mass meeting of citizens, before it was passed by the legislature. This charter was amended from time to time by more than a score of special acts. In 1851 a second revised charter was enacted, which in turn was frequently amended and supplemented by special acts. A third charter was enacted in 1863; and this also was amended from time to time. In 1875, the city of Chicago voted to adopt the general cities and villages act of 1872; and has been governed under its provisions and later amendments; but special provisions for Chicago have also been passed from time to time by means of classified and optional acts, and since 1904 by special legislation subject to local referendum.

Under the first city charter, the city had an area of 10.6 square miles. These limits have been extended from time to time, at first by special acts of the legislature, and since 1870 under the provisions of the cities and villages act for the annexation of territory. Four additions were made before 1870; and by the latter date the city had an area of 35.66 square miles. In 1889, an area of 126.07 square miles was added at one time; including the city of Lake View, the village of Hyde Park, the towns of Lake and Jefferson (embracing several suburban districts) and part of the incorporated town of Cicero. Further annexations have been made from time to time of small areas, absorbing a number of villages; and the total area of the city is now about 200 square miles.

The following table shows the development of the city by annexations:

Territorial Growth of Chicago.

Town of Chicago incorporated August, 1833.

City of Chicago incorporated March 5, 1837.

1. (To Western Avenue) Act of Feb. 16, 1847.
2. (Fullerton Ave. and 31st St.,) Act of Feb. 12, 1853.
3. (To 39th St., S. and N. W.) Act of Feb. 13, 1863.
4. (To Crawford Ave. W.) Act of Feb. 27, 1869.
5. (North to Fullerton Ave. N. W.) Act of May 16, 1887.
6. (To Cicero Ave. W., Belmont Ave. N. W.) Act of April 29, 1889.
7. Lake View, Jefferson, Hyde Park, Lake and part of Cicero, Election June 29, 1889.
8. Village of Gano, April 1, 1890.
9. South Englewood, May 12, 1890.

10. Villages of Washington Heights and West Roseland, Nov. 4, 1890.
11. Village of Fernwood, April 7, 1891.
12. Villages of West Ridge and Rogers Park, April 19, 1893.
13. Village of Norwood Park, Nov. 7, 1893.
14. Part of Calumet, Feb. 25, 1895.
15. Part of Cicero, (Austin), April 4, 1899.
16. Village of Edison Park, Nov. 8, 1910.
17. Village of Morgan Park, April 7, 1914.
18. Village of Clearing, April 6, 1915.
19. Part of Evanston, Feb. 8, 1915.
20. Part of Niles (re-annexed), April 5, 1915.
21. Part of Town of Stickney, June 7, 1915.
22. Part of Calumet by Act of Legislature, July 1, 1915 (territory surrounded by city after annexation of Morgan Park).
23. Part of Town of Stickney, Nov. 6, 1917.

Local districts not noted above absorbed by annexation include: Bowmansville, Brighton, Jefferson, Irving Park, Maplewood and Ravenswood.

As a result of these extensions, the city of Chicago now includes the whole area of eight townships, and part of six others, and also that of the former city of Lake View and twenty former villages. By annexation the former city and village governments have been completely absorbed in that of the city of Chicago. The townships wholly within the city retain a nominal existence; but under act of 1901 the town officers in such towns have been abolished, and their powers are exercised by the county board, county clerk and county treasurer. The towns only partly within the city have the usual list of town officers.

Organization of City Government. The organization of the city government proper is comparatively simple. The principal elective officers are the mayor and aldermen. The mayor is elected for a four-year term. The council consists of 70 members, two aldermen from each ward, elected for two-year terms, one each year. A special act of 1919, subject to referendum, would reduce the number of aldermen to 50, one to be elected from each of 50 wards; but this act was not adopted on the referendum vote. Other elective officers are the city clerk and city treasurer, elected for two-year terms, in April, at the same time as aldermen; and the chief justice and 30 associate justices of the Municipal Court, and the bailiff and clerk of that court, elected for six-year terms, at the November elections, one-third of the justices being elected every two years. The administrative functions of the city government are exercised through 20 departments, the heads of which are appointed by the mayor with the consent of the council. Subordinate officials and employes are selected, for the most part, under civil service regulations.

There are altogether 106 elective city officers. Each voter votes for 38 city officers, for a maximum of five at the city election, and for from ten to thirteen municipal court officers at the November elections.

Connected with the city government are several other substantially independent agencies: the Board of Education, the Library Board and the Municipal Tuberculosis Sanitarium. The members of these bodies are appointed by the mayor, subject to confirmation by the council; taxes for their use are levied by the council. But the action of the council in these matters is largely formal and perfunctory; and these bodies are practically free from control by the city government proper.

Overlapping authorities. In addition to the various organs of the city government there are a large number of other local governing agencies exercising jurisdiction within the limits of the city. Cook County and the Sanitary District of Chicago cover a larger area than the city; and every resident of the city is also under the jurisdiction of both of these larger districts. Other bodies have authority over only part of the city; but every resident of the city is subject in some degree to one or more of these authorities.

Below is a list of the local governing agencies within the limits of the city of Chicago:

Cook County

Forest Preserve District

Sanitary District of Chicago

City of Chicago

Board of Education

Library Board

Municipal Tuberculosis Sanitarium

14 towns (8 of these wholly within the city have no town officers and are almost eliminated).

17 Park Districts, as follows:

South Park Commissioners

West Chicago Park Commissioners

Lincoln Park Commissioners

Ridge Avenue Park Commissioners

North Shore Park Commissioners

Calumet Park Commissioners

Fernwood Park Commissioners

Ridge Park Commissioners

Irving Park Commissioners

Northwest Park Commissioners

Old Portage Park Commissioners

Edison Park Commissioners

West Pullman Park Commissioners (partly outside of city)

Ravenswood Manor-Gardens Park Commissioners

River Park Commissioners

Commissioners of the First Park District of the City of Evanston (partly within Chicago)
Albany Park Commissioners

The entire city constitutes one school district; and territory annexed to the city is also annexed to the school district. The board of education is a body politic and corporate, and, as reorganized by act of 1917, consists of 11 members, appointed by the mayor with the approval of the council, two or three retiring each year, and their successors to be appointed for five-year terms. The city treasurer is ex-officio school treasurer; and is required to keep school funds separate, subject to the order of the board of education upon warrants signed by its president and secretary and countersigned by the mayor and city comptroller.

The Public Library is organized under the library law of 1872, with a board of nine directors, appointed by the mayor, with the approval of the council, three being appointed each year for terms of three years. This board has exclusive control of library funds, which are kept by the city treasurer subject to the order of the library board.

The Municipal Tuberculosis Sanitarium has been established under an act of 1908, with a board of directors of three members, appointed by the mayor, with the approval of the council, one each year for a term of three years.

Other governmental agencies, connected with the city government, but having a special legal status are the Municipal Court, the House of Correction, the Board of Election Commissioners and the boards of trustees of pension funds.

The House of Correction is governed, under an act of 1871 by a board of inspectors, consisting of the mayor and three other persons appointed by the mayor, with the advice and consent of the council, one appointed each year for a term of three years. This board has power to make agreements with the county board and with city and village trustees as to the keeping of prisoners.

The board of election commissioners is an anomalous body. Its members are appointed by the County Judge; and some salaries and the expenses of general and state elections are borne by the county. But they are also city officials; and the salaries of most employees and the expenses of city elections are borne by the city.

Boards of trustees of pension funds also occupy a peculiar position. They consist of representatives of the city or other local government and representatives of the particular class of public employes. Separate boards have been provided for the police, firemen, school, library, House of Correction, Municipal employes, and the several park district pension funds.

Sanitary District of Chicago. The Sanitary District of Chicago is a distinct municipal corporation, organized in 1890 (under an act of 1889), for the primary purpose of constructing a channel or canal, from the Chicago river to the Des Plaines river, for the disposal

of the sewage of Chicago and neighboring territory so as to prevent the contamination of Lake Michigan, which is the source of the city's water supply. The district has also power to establish and maintain docks and to control water power in connection with the drainage canal.

As first established the district covered 185 square miles, including the greater part of the city of Chicago and a smaller area outside of the city. This area has been extended from time to time, by act of the legislature subject to optional local referendum; and is now nearly 400 square miles, including the entire city of Chicago and about an equal area outside of the city, and over two-fifths of the area of the county. The population of the district is about 97 per cent of that of the county; and the assessed valuation is about 98 per cent of the entire county.

The governing body of the district is a board of nine trustees, elected at large by the voters in the district, three members every second year for a term of six years. The President of the board is one of the trustees elected as President as well as trustee.

The district has its own taxing and borrowing powers. The main channel has cost approximately \$24,000,000. Improvements have been made in the Chicago river at a cost of more than \$10,000,000; a north shore channel, providing a direct outlet for the sewage of Evanston and the village of Wilmette has cost \$3,250,000, and the Calumet-Sag channel (now under construction), to drain the Calumet region to the south of the city, will cost about \$12,500,000. From the water power developed at Lockport, the district generates electric current which is sold to the city of Chicago and other municipal corporations.

Within the Sanitary District and outside the city of Chicago there are 162 separate taxing bodies, in addition to the county and the Sanitary District, as follows:

5 Cities: Berwyn, Blue Island, Evanston, Harvey and West Hammond.

The incorporated town of Cicero.

39 Villages: Bellwood, Broadview, Brookfield, Burnham, Burr Oak, Dolton, Elmwood Park (in part), Evergreen Park, Forest Park, Franklin Park, Glencoe, Glenview, Hinsdale (in part) Kenilworth, La Grange, La Grange Park, Lyons, Maywood, Melrose Park, Morton Grove, Mount Greenwood, Niles, Niles Center, Oak Park, Phoenix, Posen, Riverdale, River Forest, River Grove, Riverside, Robbins, Shermerville (in part), South Holland (in part), Stickney, Summit, Tessville, Western Springs, Wilmette and Winnetka.

9 Park Districts: Blue Island, Clyde, Glencoe, Kenilworth, Oak Park, Riverdale, River Forest, Wilmette, Winnetka, (The First Park District of Evanston is partly within Chicago.)

12 Towns: 6 wholly within the district—Berwyn, Evanston, New Trier, River Forest, Oak Park and Riverside; 6 partly outside the district—Bremen, Leyden, Lyons, Northfield, Proviso and Thornton. (In addition 3 towns wholly within the district and partly in Chicago—Calumet, Niles and Stickney; and 3 towns partly outside the district and partly in Chicago—Maine, Norwood Park and Worth.

66 School Districts: 47 wholly within the Sanitary district, and 19 partly outside.

11 High School Districts: 6 wholly and 4 in part; also part of the non-high school district.

15 Library Boards.

4 Drainage Districts.

In these communities the machinery of local government is even more complex and more difficult for the voter than in the city of Chicago. In addition to substantially the same county, sanitary district and city or village officers, the voters in these communities are also required to elect township and school district officers, and in some places also park, library, high school and drainage district officers. They have to face the problems caused by the extraordinary number of elective county officers in Cook County and also those caused by the large number of local elections for the various minor districts.

Towns in Cook county.⁶ There are altogether 38 towns in Cook County. Of these, eight are entirely within the city of Chicago, and have practically no separate town government. Within the Sanitary District are included ten other towns entirely and nine more in part. Outside of the Sanitary District, there are eleven towns.

Of the towns entirely outside of the Sanitary District, all are mainly agricultural, except Bloom Township, which has mainly an urban and suburban population in the industrial city of Chicago Heights and the villages of Glenwood, South Chicago Heights and Steger. Of the other ten townships entirely outside of the Sanitary District, seven each contain not more than one village, and most of these had less than 1,000 population in 1910; the largest (Lemont) had 2,284 in 1910. These townships are in two groups: six in the northwest (Barrington, Elk Grove, Hanover, Palatine, Schaumburg and Wheeling); and four in the southern part of the county (Lemont, Palos, Orland and Rich).

The towns partly in and partly outside of the Sanitary District differ in character. Several of them have a number of suburban villages, some within and some outside the Sanitary District. Such towns as Lyons and Proviso (west of Chicago) and Thornton (on the south) are largely suburban in character. Leyden, Norwood Park and Maine (northwest of Chicago) and Worth (on the south) include several villages or suburban districts. Bremen and Northfield have some small villages, but are as yet largely agricultural.

⁶ The terms town and township are used in the Illinois statutes in a number of different senses. The congressional township is a geographical area used in the land surveys, and as such has no political significance. The school township is in most cases, but not always co-terminous with the congressional township. The civil town, under the township organization law, is more often different in area from the school and congressional township. Incorporated towns are usually villages, incorporated before 1870; but the incorporated town of Cicero is co-terminous with the civil town, and has the usual officers of the civil town as well as officers for village functions.

All of the ten towns entirely within the Sanitary District and partly or wholly outside of Chicago may be classed as suburban. Several suburban townships cover only a comparatively small area, taken out of the former congressional townships—e. g. Norwood Park, Riverside, River Forest, Oak Park, Berwyn and Cicero.

The towns of Lyons, Proviso and Thornton have the most complex variety of local districts. Lyons has 10 villages (6 partly in other townships), 10 school districts (5 union districts), 2 library boards and part of 1 high school district. Proviso has 9 villages (2 partly in other townships), 9 school districts (3 union districts), 3 library boards, 1 high school district and part of 2 others. Thornton has 2 cities, 11 villages (4 partly in other townships), 14 school districts (2 union districts), 1 high school district, 1 library board and 1 park district.

For towns not wholly included in Chicago the regular list of elective town officers is: Supervisor, Town Clerk, Assessor, Town Collector, Highway Commissioner, 1 to 5 Justices of the Peace, 1 to 5 Constables, and 3 school trustees. There are however, some exceptional arrangements for certain of the towns in Cook County. The only elective town officers for the town of the city of Evanston are justices of the peace and constables. The city clerk is ex-officio town clerk, the city treasurer is ex-officio town collector, and the assessor is appointed by the county board of assessors. The distinctly suburban towns of Berwyn, Cicero, Oak Park and River Forest do not elect highway commissioners. In two cases, three towns are included in one school township; and only one set of school trustees is elected for each of these school townships.⁷ Two towns (Thornton and Bloom) each include 2 school townships.

The total number of elective town officers in the county is as follows:

Elective Town Officers.

Supervisors	29
Town Clerks	29
Assessors	29
Town Collectors	29
Highway Commissioners	25
Justices of the Peace.....	94
Constables	83
School Trustees	84
Total	402

Towns, Villages and Cities in Cook County.

	Population.	
	1880	1910
Barrington township	1,592	1,953
Barrington village (part)	410	939
Berwyn township		5,841
Berwyn City		5,841
Bloom township	1,431	18,339
Chicago Heights City.....		14,525
Glenwood Village		581
Homewood Village (part)		174
South Chicago Heights Village.....		552
Steger Village (part)		919

⁷Berwyn, Cicero and Oak Park; and Proviso, River Forest and Riverside.

Towns, Villages and Cities in Cook County—Continued.

	Population.	
Bremen township	1,653	1,898
Bremen Village	210	
Posen Village (part)		309
Robbins Village (1918)		
Tinley Park Village		309
Calumet township (outside Chicago)	2,576	8,881
Blue Island (part)	503	3,659
Morgan Park Village (part)		3,494
Riverdale Village (part)		587
Washington Heights Village	1,053	
Burr Oak (1912)		
Chicago City	503,185	2,185,283
Cicero Town	5,182	14,557
Austin	1,359	
Brighton	605	
Clyde	96	
Oak Park Village	1,888	
Elk Grove Township	1,201	1,302
Mt. Prospect Village (part) (1917)		
Evanston Township	6,703	690
Evanston Village	4,200	
Rogers Park Village	529	
South Evanston Village	1,517	
(See Ridgeville Township)		
Hanover Township	1,300	1,649
Bartlett Village		408
Elgin City (part)		223
Hyde Park Township	15,716	
Jefferson Township	4,876	
Bowmansville	337	
Irving Park Village	490	
Jefferson Village	619	
Maplewood Village	725	
Lake Township	18,380	
Lake View Township	6,565	
Ravenswood Village	485	
Lemont Township	3,798	4,296
Lemont Village	2,108	2,284
Desplaines Village (part)	178	
Leyden Township	1,383	2,813
Franklin Park Village		683
Elmwood Park Village (1914)		
River Grove Village		418
Schiller Park Village (1914)		
Lyons Township	3,009	11,289
Brookfield Village (part)		732
Hodgkins Village		480
La Grange Village	531	5,282
Lyons Village (part)		1,394
Riverside Village (part)		54
Spring Forest Village (part)		314
Summit Village		949
Western Springs Village (part)		898
Justice (1911)		
Maine Township	2,346	7,193
Des Plaines Village	640	2,348
Edison Park Village		543
Park Ridge	457	2,009
Riverview Village		312
New Trier Township	2,223	12,532
Evanston Village (part)	200	
Glencoe Village	387	1,899
Gross Point Village	327	1,008
Kenilworth		881
Wilmette Village	419	4,953
Winnetka Village	584	3,168
Niles Township	2,503	4,203
Morton Grove Village		836
Niles Village		569
Niles Center Village		568
Tessville Village		359
Northfield Township	1,807	2,675
Glen View Village		652
Shermerville Village		441
Norwood Park Township	1,675	5,251
Oak Park Township and Village	1,888	19,444
Orland Township	1,208	1,230
Orland Park Village		367

Towns, Villages and Cities in Cook County—Concluded.

	Population.	
	1880	1910
Palatine Township	1,974	2,147
Palatine Village	731	1,144
Palos Township	1,209	1,405
Spring Forest Village (part).....		20
Palos Park Village (1914).....		
Proviso Township.....	3,061	26,921
Bellwood Village (1913).....		
Broadview		
Brookfield Village (part)		1296
Forest Park Village.....		6,594
Harlem	923	
Hillside Village		328
La Grange Park Village.....		1,131
Maywood Village	716	8,035
Melrose Park Village.....		4,806
Western Springs Village (part).....		7
Rich Township	1,702	1,301
Matteson Village	451	461
Ridgeville Township (now town of city of Evanston).....		24,978
Evanston City	4,200	24,978
(See Evanston Township)		
River Forest Township.....		
River Forest Village.....		2,456
Riverside Township	498	1,980
Riverside Village (part)	450	1,648
Brookfield Village (part)		158
Lyons Village (part)		89
Schaumburg Township	954	954
Stickney Township		962
Clearing Village (1912-1915).....		
Stickney Village (1913).....		
Thornton Township	3,337	22,067
Burnham Village		328
Dolton Village	448	1,869
East Hazelcrest (1918)		
Hazelcrest (1911)		
Harvey City		7,227
Homewood Village (part)	313	539
Lansing Village	218	1,060
Phoenix Village		679
Posen Village (part)		34
Riverdale Village (part)		330
South Holland Village.....		1,065
Thornton Village	401	1,030
West Hammond City		4,948
Wheeling Township	2,296	3,845
Arlington Heights Village.....		1,943
Mt. Prospect Village (1917).....		
Wheeling Village	204	260
Worth Township	2,180	7,554
Blue Island (part)	1,039	4,474
Evergreen Park Village.....		424
Morgan Park Village (part)		200
Mt. Greenwood Village		276
Oak Lawn Village		287
Worth Village (1914).....		
Chicago Ridge (1914).....		

Cities and villages. There are altogether 9 cities, 67 villages and 2 incorporated towns in Cook County. In addition to Chicago, there are 5 other cities, 39 villages and 1 incorporated town within the Sanitary District; and there are 3 cities, 28 villages and 1 incorporated town in the county outside of the Sanitary District.

Cities in Cook County.

Name.	Date of Incorporation.	Population 1910.
Chicago	1833	2,185,283 In Sanitary District
Evanston	1857	24,978 In Sanitary District
Chicago Heights	1892	14,525
Blue Island	1843	8,043 In Sanitary District

Cities in Cook County—Concluded.

Name.	Date of Incorporation.	Population 1910.
Harvey	1895.....	7,227 In Sanitary District
Berwyn	1901.....	5,841 In Sanitary District
West Hammond	1893.....	4,948 In Sanitary District
Park Ridge	1873.....	2,009
Elgin (small part)	1854.....	25,976

All of the cities, except Chicago, Harvey and Elgin are governed under the general provisions of the Cities and Villages Act, with a mayor, city clerk, treasurer, attorney, and police magistrates as elective city officers, and aldermen elected by wards. Evanston and Chicago Heights have each 14 aldermen, Blue Island and Berwyn each 10, West Hammond 8, and Park Ridge 6. Harvey and Elgin have adopted the commission form of city government with 5 elected commissioners; and also elect police magistrates. Excluding Chicago and Elgin (only a small part of which is in Cook County) there are 118 elective city officials. Of these, 88 are elected in cities within the sanitary district.

Villages in Cook County.

Name.	Date of Incorporation.	Population 1910.
Arlington Heights.....	1887	1,943
Barrington (partly in Lake County)....	1865	1,444
Bartlett	1891	408
Bellwood	1900	943
Broad View	1913	.....
Brookfield	1893	2,186
Burnham	1907	328
Burr Oak	1912	.....
Cicero (incorporated town).....	1867	14,557
Chicago Ridge	1914	.....
Des Plaines	1873	2,348
Dolton	1892	1,869
East Hazel Crest.....	1918	.....
Elmwood Park	1914	.....
Evergreen Park	1893	424
Forest Park	1907	6,594
Franklin Park	1892	683
Glencoe	1869	1,899
Glen View	1899	652
Glenwood	1903	581
Gross Point (dissolved).....	1874	1,008
Hazel Crest	1911	.....
Hillside	1905	328
Hinsdale (small part).....	.....	.....
Hodgkins	1896	480
Homewood	1893	713
Justice	1911	.....
Kenilworth	1896	881
La Grange	1879	5,282
La Grange Park.....	1892	1,131
Lansing	1893	1,060
Lemont	1873	2,284
Lyons	1888	1,483
Matteson	1889	461
Maywood	1881	8,033
Melrose Park	1882	4,806
Morton Grove	1895	836
Mount Greenwood	1907	276
Mount Prospect	1917	.....
Niles	1899	569
Niles Center	1888	568
Oak Lawn	1909	287
Oak Park	1901	19,444
Orland Park	1892	369
Palatine (incorporated town).....	1869	1,144
Palos Park	1914	.....
Phoenix	1900	679
Posen	1900	343
Riverdale	1892	917

Villages in Cook County—Concluded.

Name.	Dates of Incorporation.	Population 1910.
River Forest	1880	2,456
River Grove	1888	418
Riverside	1,875	1,702
Riverview	1895	312
Robbins	1918	.....
Schiller Park	1914	.....
Shermerville	1901	441
South Chicago Heights.....	1907	552
South Holland	1894	1,065
Spring Forest	1892	334
Steger (partly in Will Co.).....	1896	2,161
Stickney	1913	.....
Summit	1890	949
Tessville	1911	359
Thornton	1900	1,030
Tinley Park	1892	309
Western Springs	1886	905
Wheeling	1894	260
Wilmette	1872	4,943
Winnetka	1869	3,168
Worth	1914	.....

The village of Oak Park, with a population of 19,444 in 1910, and the incorporated town of Cicero, with a population of 14,557 in 1910, are larger than most of the cities in Cook County outside of Chicago. In 1910, six other villages had more than 3,000 population, and 15 more had over 1,000 population each. Most of the villages are governed, under the general provisions of the cities and villages act, by a president and board of six trustees, elected for two-year terms, three trustees elected each year. A clerk is also elected each year; and a police magistrate may be elected for a four-year term. Police magistrates are elected in 62 villages, all except East Hazel Crest, Hodgkins, Niles, Orland, Palatine, Palos Park, and South Holland.

The incorporated towns of Cicero and Palatine and the village of Winnetka are governed under special acts passed in 1867 and 1869, amended by later legislation.

The villages of Forest Park and Palos Park have adopted the commission form of government, with 5 elected commissioners.

The total number of elected officers in the villages and incorporated towns is approximately 608. Of these 352 are elected in villages within the Sanitary District.

Park districts. Park administration in Chicago and Cook County presents an extraordinary list of separate authorities, unparalleled in this or any other country. The entire county forms a forest preserve district, under the control of the county board. Within the city there are three large park districts and 14 small park districts, each with a separate board of commissioners. There are some parts of the city not in any of these park districts; while the city government maintains a large number of small parks and playgrounds, most of which are within the territory under the jurisdiction of the separate park boards. Outside of Chicago and within the Sanitary District, there are nine other park districts; and outside the Sanitary District are two other park districts (Park Ridge and Des Plaines). Alto-

gether (including the forest preserve district) there are 29 distinct park authorities in the county.

The three large park districts in Chicago were organized under special acts of the legislature passed in 1869. At that time each of these districts included territory not within the city limits; but all of these districts are now within Chicago. The South Park Commissioners are appointed by the judges of the circuit court of Cook County. The West Park Commissioners and the Lincoln Park Commissioners are appointed by the Governor of the state.

The small park districts have been organized under a general park act, to provide park facilities in sections not included in any of the other park districts. They are organized on petition and approval by the voters of the proposed district. Each district has 5 elected commissioners, one elected each year for a term of 5 years.

There are 89 park commissioners in the city of Chicago; and 55 more in the other park districts within the county. There are 125 elected park commissioners, 70 within the city and 55 more within the rest of the county.

The South Park District and each of the small park districts are municipal corporations and levy all of their taxes directly. The West Chicago Park District is also a municipal corporation and levies directly part of the taxes it expends; the remainder is levied by the town of West Chicago. The Lincoln Park Board is not a municipal corporation and has no power to levy taxes; and its principal support is from taxes levied by the towns of North Chicago and Lake View.

There is a wide variation in the amounts which the several park boards are able to raise by taxation; and the variation is not at all in proportion either to the park acreage or to the population within the respective districts. The valuable property situated in the down town business section of Chicago lies within the South Park District; and all of the park taxes on this property are under the control of the South Park Commissioners. The greatest density of population, and hence the greatest need for park facilities, is within the territory of the West Park District, where property values are much lower. As a result of this situation there is an inequitable distribution of park facilities.

The South Park District with about one-third of the population and less than half of the area of the city has three-fifths of the assessed valuation, and two-thirds of the total park area. A tax rate of 50 cents on the \$100 raises one-half of the total park taxes for the city. The West Park District with about two-fifths of the population has only about one-fifth of the assessed valuation, and one-fifth of the park area (about one-third of that of the South Park District). A tax rate of about 80 cents raises only about 30 per cent of the total park taxes for the city.

In the small park districts within Chicago, the park tax rates varied in 1918 from 28 cents on the \$100 in the Albany Park District to 57 cents in the Ravenswood Manor-Gardens Park District. In park districts outside Chicago, the park tax rates varied in 1918

from 33 cents on the \$100 in the Clyde Park District to 85 cents in the Wilmette Park District.

School and High School districts. Outside of Chicago, there are 180 school districts in Cook County. Of these, nine are union districts partly in other counties. Forty-seven districts are entirely within the Sanitary District and nineteen are partly within and partly outside of the Sanitary District.

The towns of Oak Park and River Forest are co-terminous with the school districts and villages of the same names.. One school district includes most of the town of Cicero and part of the town of Stickney. The town and city of Evanston includes one school district and part of two others. The other towns have from 4 to 14 school districts: Lyons and Worth have each 10; Bloom, Bremen and Leyden, each 11; Barrington, 12; and Thornton, 14.

There are fifteen high-school districts in the county and outside of Chicago, and the remainder of the county forms a non-high school district. Eight high school districts are in two or more towns. Two towns with no high school district are partly in the city of Chicago (Niles and Norwood Park); one (Hanover) is partly in the city of Elgin; and three local school districts maintain high schools. Nine towns have no part within a high school district—Bremen, Leyden, Northfield, Orland, Palos, Rich, and Schaumburg. Three of these (Bremen, Leyden and Northfield) are partly within the Sanitary District. Twenty towns are wholly or in part within the non-high school district.

High School Districts in Cook County.

Arlington Heights (Elk Grove, Wheeling and Palatine townships)
 Bloom Township
 Blue Island (Calumet and Worth townships)
 Evanston Township
 Lemont Township (Union district with DuPage County)
 Lyons Township (also LaGrange Park)
 Maine Township
 Mount Prospect (Elk Grove and Wheeling townships)
 New Trier Township
 Oak Park—River Forest
 Palatine
 Proviso Township
 Riverside—Brookfield Township
 Morton J. Sterling (Berwyn, Cicero and Stickney)
 Thornton Township

School taxes in the suburban cities and villages are much higher than in the city of Chicago. The total school tax authorized for the city of Chicago is lower than the general school tax for other school districts; while high school districts in such suburban places are also authorized to levy an additional tax for high schools.

Each school district of less than 1,000 inhabitants elects a board of three school directors. Each district of more than 1,000 inhabitants elects a board of education, consisting of a president and six members, and three additional members for each additional 10,000 inhabitants to a maximum of 15 members. There are 35 districts with boards of seven members, and 5 districts with boards of ten members each. In each high school district there is elected a high school board of education of five to seven members. In the non-high school district there is a board of three elected members, and the county superintendent of schools, who is ex-officio a member and secretary, but with no vote. The board in the non-high school district has for its only function to levy a tax to pay the tuition of residents of the district attending any recognized high school. As noted in connection with the towns, each of the 28 school townships outside of Chicago elects three school trustees.

School trustees in school townships co-terminous with towns are elected at the annual town meeting. In other school townships they are elected on the second Saturday in April, which is also the date for electing high school boards of education. Boards of school directors and boards of education are elected on the third Saturday of April.

The elective district school officers in Cook County are shown below:

140 Boards of 3 School Directors.....	420
35 Boards of Education, 7 each.....	245
5 Boards of Education, 10 each.....	50
15 High School Boards.....	83
1 Non-High School Board.....	3

801

Library Boards. In addition to the Chicago Public Library, there are public libraries in 4 cities, 1 township and 13 villages in Cook County—a total of 18 library boards in Cook County outside of Chicago. There are also public libraries and library boards in the city of Elgin and the Village of Hinsdale, small parts of which are in Cook County.

The city library boards consist of nine members, appointed by the mayor with the consent of the city council. Village and township library boards have six members, elected by popular vote. Library taxes in cities are levied by the city council, but library taxes for both cities and villages are levied outside of the regular city and village tax; and the library boards have exclusive control over the libraries and their funds.

Public Libraries in Cook County.

Bloom Township	Brookfield Village	Maywood Village
Blue Island City	Des Plaines Village	Melrose Village
Chicago City	Forest Park Village	Oak Park Village
Elgin City	Franklin Park Village	River Forest Village
Evanston City	Glencoe Village	Summit Village
Harvey City	Hinsdale Village	Wilmette Village
Park Ridge City	La Grange Village	Winnetka Village

The six city boards have a total of 54 members; the fifteen village and township boards aggregate 90 elected members.

Drainage Districts. A considerable number of drainage districts have been organized in Cook County, under the various provisions of the drainage laws. Owing to the different and complicated methods for organizing such districts it is difficult to secure a complete list; and it is still more difficult to determine what districts are still in active operation.

In the report on Water Resources of Illinois, prepared and published for the Illinois Rivers and Lakes Commission in 1914, there is given a list of drainage districts in the state, which includes 13 in Cook County. A summary table for 10 districts with a total area of 16,406 acres, showed that 39½ miles of open ditch had been constructed and 4 miles of tile laid, with total assessments of \$158,817.

Inquiries made in the summer of 1919 at the county offices, and to town clerks, drainage commissioners and other sources, have secured information of the following 27 drainage districts in Cook County:

Addison Creek Drainage District Proviso and Leyden townships..	12,000 acres
Bremen township, Drainage District No. 1.....	.....
Bremen township, Drainage District No. 3.....	.....
Bremen township, Drainage District No. 4.....	.....
Buffalo Creek Drainage District Wheeling and Palatine townships	.....
Calumet Union Drainage District No. 1 Thornton and Bremen townships	.....
Elk Grove township, Drainage District No. 1.....	2,500 acres
Hanover township, Drainage District No. 1.....	500 acres
Hanover township, Drainage District No. 2.....	328 acres
Maine township, Drainage District No. 1.....	190 acres
Maine township, Drainage District No. 2.....	830 acres
Maine township, Drainage District No. 5.....	833 acres
New Trier township, Drainage District No. 1.....	900 acres
Niles township, Drainage District No. 2.....	1,600 acres
North Creek Drainage District Thornton and Bloom townships....	19,000 acres
Orland township, Drainage District No. 2.....	1,107 acres
Orland township, Drainage District No. 4.....	1,200 acres
Palatine township, Drainage District Palatine and Barrington townships	.....
Rich township Drainage District No. 2.....	.....
Salt Creek Drainage District Palatine township and DuPage County	.....
Union Drainage District No. 1 Northfield and Deerfield township (Cook and Will Counties).....	6,000 acres
Union Drainage District No. 1 of Rich and Frankfort townships (Cook and Lake Counties).....	2,500 acres
Union Drainage District No. 3 of Orland township and No. 2 of Bremen	3,000 acres
Union Drainage District No. 6 of Orland township and Frankfort (Will County).....	.....
Weller Creek Drainage District: Wheeling, Elk Grove, Maine and Palatine townships	12,000 acres
Westmoreland Drainage District: Niles and New Trier townships	1,600 acres
Wheeling Drainage District: Wheeling, Palatine and Elk Grove townships and Lake Co.....	5,000 acres

Four of these drainage districts are within the Sanitary District of Chicago—the New Trier district, Niles district No. 2, Westmoreland district, and the Northfield-Deerfield district.

For each drainage district organized under the act of 1879, three drainage commissioners are appointed by the county court. For each

district organized under the act of 1885, there are three commissioners, one elected each year for a term of three years.

Congressional and Legislative Districts. In addition to the numerous governments for local purposes, Chicago and Cook County are also divided into districts for the election of members of Congress and of the General Assembly. There are 6 congressional districts entirely within the city of Chicago, and 4 others partly in Chicago and partly in Cook County outside of the city, one district also including Lake County. There are 14 senatorial districts, for the election of state senators and representatives in the city of Chicago, and five others in Cook County, four of the latter being partly in the city and partly outside.

The boundaries of these congressional and legislative districts do not correspond with each other, nor with the ward lines for the election of aldermen, nor with any of the local government areas. These add further to the complexities of the political and governmental situation and to the problems of the voters on election day.

The Voter's Burden. In the table below is summarized the data as to the burden placed on the voter by the enormous number of public officials elected in connection with the numerous and overlapping governmental bodies in Chicago and Cook County. There is an aggregate of 2,557 officials voted for in Cook County, of which 417 are within the City of Chicago, and 1,640 within the Sanitary District. Each male elector in Chicago is expected to vote in a brief series of years for 178 different officials, and in some parts of the city the number is 187. In other cities and in villages in Cook County each male elector is expected to vote for from 172 to 197 different officials.

At the presidential election in November, 1916, each male elector in Chicago was expected to vote for 71 different officials, including presidential electors; and at the general election in November, 1918, for 55 different officials. Male electors in Cook County outside of Chicago were asked to vote for 61 different officials at the presidential election in November, 1916, and for 35 at the general election in November, 1918. Other officials are elected at city, village, township, school and judicial elections held at various times from March to September. Including primary elections there are in Chicago seven elections in presidential years; and in other cities and in villages there are from eight to ten elections in such years.

Public Officials Voted for in Cook County.

	Aggregate.			Each male elector may vote for					
				In Chi- cago.	Out- side Chi- cago.	Nov. 1916		Nov. 1918.	
	Cook county.	In Chi- cago.	In sani- tary dis- trict.			In Chi- cago.	Out- side Chi- cago.	In Chi- cago.	Out- side Chi- cago.
United States gov- ernment	43	43	43	34	34	32	32	4	4
State officers.....	18	18	18	18	18	10	10	5	5
General Assembly.	76	72	76	4	4	4	4	4	4
County officers.....	79	74	79	74	69	11	11	23	18
Sanitary district. .	10	10	10	10	10	4	4	4	4
City of Chicago.....	106	106	106	38	.....	11	.....	14	.....
Other cities.....	118	.....	88	.....	} 6 to 15	.....	.....	.....	.....
Villages.....	606	.....	352	.....		.....	.....	.....	.....
Townships.....	402	24	261	(a) 4	9 to 18	.....	.....	.....	.....
Park districts.....	125	70	115	(a) 5	5	.....	.....	.....	.....
Library boards.....	90	.....	66	.....	6	.....	.....	.....	.....
School districts.....	715	.....	359	.....	3 to 10	.....	.....	.....	.....
High school dis- tricts.....	86	.....	55	.....	5	.....	.....	.....	.....
Drainage districts.	81	.....	12	.....	3	.....	.....	.....	.....
Totals.....	2,557	417	1,640	178 to 187	172 to 197	72	61	54	35

(a) In some parts of Chicago,

III. PROPOSALS FOR UNIFICATION.

Constitutional Convention of 1870. In the constitutional convention of 1869-70, some attention was given to proposals for authorizing large cities to be formed into separate counties. Early in the convention (on January 13, 1870) Mr. E. M. Haines of Lake County introduced a resolution, which was referred to the Committee on Counties as follows: "*Resolved* that cities containing a population exceeding 300,000 may be erected into a county."¹

On the next day, Mr. Cameron of Cook County introduced a counter resolution, in opposition to that of Mr. Haines, which he considered presented "a pernicious principle", as follows:² "*Resolved* that no township in any county shall be transferred from one county to another without the assent of a majority of the voters of said township".

Later Mr. Cameron presented several petitions from towns in Cook County opposing any change in county boundaries; and stated that the Cook County delegation was opposed to any change.³

A minority report was presented by Mr. Abbott of the Committee on Counties, to authorize the formation of new counties with the consent of two-thirds of the voters of the proposed county, without requiring the consent of the county from which it would be detached. In Committee of the whole (April 18) this was not agreed to. Several amendments to authorize the transfer of parts of counties, without the consent of the county from which they would be detached, were also defeated.⁴

Somewhat later (April 27, 1870) when the article on counties was being considered in the convention, Mr. Turner of Stephenson County proposed an amendment to section 1, which was agreed to without debate by a vote of 26 to 18, as follows:

"But any city having a population of 200,000 or more may be organized into a separate county."⁵

On the next day, Mr. Turner moved to reconsider this amendment, because of objections from Cook County members; but the motion was held out of order, and it was suggested that the matter could be taken up later. Mr. Anthony of Cook County objected to the amendment, as not wanted in Cook County and likely to cause trouble. Mr. Haines of Lake County spoke in favor of the amendment.⁶

The day following, at the end of the convention debate on the article on counties, Mr. Skinner of the 28th district (Adams County,

¹ Proceedings and Debates, I, 180.

² Proceedings and Debates, I, 192.

³ Proceedings and Debates, I, 306, 851.

⁴ Proceedings and Debates I, 307; II, 1325-28.

⁵ Proceedings and Debates II, 1521.

⁶ Proceedings and Debates II, 1535-36.

etc.) offered an additional section providing that cities of over 50,000 population might be created into counties. This was laid on the table by a vote of 41 to 19. Three Cook County members (Anthony, Coolbaugh and Medill) voted for the motion to lay on the table; the other Cook County members were absent or not voting.⁷

On May 11, 1870, when considering the report of the Committee on Revision and Adjustment, Mr. Cameron of Cook County moved the suspension of the rules so as to strike out the provision authorizing cities of over 200,00 population to be created as separate counties. He stated that he had presented twenty petitions against such a clause; and that it would be unjust to the towns outside of Chicago. Mr. Turner referred to his earlier attempt to reconsider his own motion; and stated that at that time Mr. Coolbaugh, of Cook County had mentioned a resolution of the Cook County Supervisors in favor of such a provision. Mr. Medill of Cook County said that the supervisors had passed a resolution in favor of creating Chicago and some adjoining townships as a separate county, as the result of a quarrel in the board; but that they were ashamed of it.

Mr. Cameron's motion to suspend the rules was then carried; the question was reconsidered, and the motion to strike out the provision was agreed to without a record vote.⁸

It may be noted that if Chicago had been organized as a separate county in 1870 it would have included only the city as it existed at that time, or only about one-sixth of the present area of Chicago.

Constitutional Amendment of 1904. Various proposals for consolidation of local governments have been presented from time to time, culminating in the adoption of section 34 of Article IV as an amendment to the state constitution. The annexations to the city of Chicago in 1889 added to the complexities of local organizations, and seem to have called attention to the need for further changes. A constitutional amendment authorizing consolidation was advocated in 1891; but no action was taken. Mayor Washburne in his message of 1892 favored the abolition of township collection of taxes and the union of county and city government.

The assessment law of 1898 established a county board of assessors and a county board of review, and eliminated the township assessors in the towns within the city of Chicago. An optional act of 1901, soon adopted by Chicago, did away with township collectors for the towns in Chicago. These two measures practically eliminated the separate town governments. Further changes, however, could only be carried out by amending the state constitution.

In 1898 the Civic Federation of Chicago appointed a consolidation committee of 100 from various organizations, with Judge M. F. Tuley as chairman. This Committee agreed to a proposed amendment, which was submitted to the legislature in 1899. In his annual message of

⁷ Proceedings and Debates II, 1557.

⁸ Proceedings and Debates II, 1835-36.

that year, Mayor Carter H. Harrison, urged the consolidation of local governments within the city limits, and recommended a council committee on consolidation.

On April 11, 1899, the House Committee on Judiciary reported a proposed amendment to Article X, Section 7. This authorized the general assembly to provide for the consolidation of city and county government within the present or future limits of Chicago, and also for the extension of the city "so as to include all of the County of Cook", subject to a referendum to the voters of the city and of the county outside of Chicago. Provisions might also be made for subordinate local governments by districts; and prohibition of the liquor traffic in any local district should not be repealed or impaired.

An amendment to strike out the words "so as to include all the county of Cook" was adopted by a vote of 75 to 27, the Cook County members voting for this amendment 22 to 13. Several other minor amendments were adopted. But no further action was taken on this proposed amendment.

In 1901 another proposed amendment was offered in the legislature, authorizing the consolidation of local governments in the city of Chicago, and the formation of a county of Chicago subject to a local referendum in Chicago and the part of Cook County outside of the city. Mayor Harrison, in his annual message of this year, renewed his recommendations for consolidation. But no action was taken on this matter in the general assembly.

In September 1902, a committee of the Civic Federation of Chicago submitted an extended report on Chicago and the constitution, favoring a separate amendment relating to local government in Chicago rather than the calling of a constitutional convention. On October 28, a local convention was called, consisting of about 70 delegates from business and civic organizations (including the Civic Federation, the Chicago Bar Association and the Union League Club) and also from the city and county government. This convention agreed to a proposed amendment authorizing the consolidation of local taxing bodies, with provisions relating to a municipal court, the abolition of justices of the peace, and revenue and borrowing powers.

The proposed amendment was introduced in the Senate on January 20, 1903, by Mr. Campbell, and in the House on March 4, by Mr. Wilkerson. It provided for the consolidation of county and other local governments in Chicago, and for the creation of not more than two counties out of the part of Cook County outside of Chicago, subject to local referendum, which on county consolidation was to be submitted to the city and to the part of the county outside of Chicago.

On January 29, another proposed amendment was introduced by Senator Humphrey of Cook County. This was much shorter and authorized the general assembly to provide for the consolidation of town, park, school and other local governments within cities, and for the abolition of justices of the peace in cities of over 150,000 population.

On March 12, the Senate Judiciary Committee reported a substitute (Senate Joint Resolution No. 12) relating to Chicago, but omit-

ting the provisions of the original resolution relating to county government. This was passed by the Senate on March 18 by a vote of 39 to 1.

The original House resolution was reported favorably by the House Committee on March 17. When taken up on April 4 an amendment to limit Chicago representation was laid on the table by a vote of 57 to 47. On passage, the resolution received a vote of 68 to 15; and lacking the required two-thirds vote further consideration was postponed. Taken up again on April 22, the provisions of Senate Joint Resolution No. 12 were offered by Mr. Wilkerson as a substitute and adopted. Amendments to limit Chicago representation were defeated by votes of 57 to 65, and 62 to 75; and the substitute resolution was passed by a vote of 115 to 3. On the same day the Senate concurred, by a vote of 47.

After an active campaign, this amendment was ratified at the election in November, 1904, by a vote of 678,393 to 94,038 as section 34 of Article IV. The vote in Cook County was 286,565 to 20,334.

Consolidation Measures. Following the adoption of the constitutional amendment of 1904, an act providing for a municipal court in the city of Chicago and abolishing justices of the peace, police magistrates and constables in that city, was passed by the general assembly in 1905, and adopted by popular vote.

To develop further the plans for consolidation, a Chicago charter convention was organized by resolution of the Chicago Council, June 19, 1905. This convention consisted of 15 members of the council, 15 members of the legislature, 15 citizens appointed by the mayor, 15 citizens appointed by the governor, and two representatives each from the board of county commissioners, sanitary district trustees, board of education, library board and the three large park boards. A comprehensive charter was prepared, providing for a consolidated municipal government, combining the powers of the city, board of education, township, park and other local governments having jurisdiction confined to or within the limits of the city of Chicago. It was expressly provided that the consolidation would not apply to drainage, improvement or forest preserve districts. The charter did not include the county or the sanitary district, nor did it consolidate the towns or other local districts partly in and partly outside of the city. Provision was made for a board of park commissioners, a board of education and a library board.

The proposed charter was introduced in the general assembly in 1907, where it was freely amended, notably by inserting a new apportionment of wards for the election of aldermen, which could not be changed after 1920. These changes aroused opposition in Chicago; and when the new charter was submitted to popular vote it was defeated.

After several years, another but less comprehensive consolidation act was prepared and was passed by the General Assembly of 1913; but this was vetoed by Governor Dunne. Two years later a similar meas-

ure, modified to meet objections, was prepared and passed. This provided that:

"All powers *and functions* not *specifically* abrogated by this act which are now vested in the city, *town*, township, park, *park district* or other local governments and authorities having jurisdiction confined to or within the city of Chicago or any part thereof, shall be *vested and consolidated* in the municipal government of the city of Chicago, and for that purpose all municipal corporations *and quasi municipal corporations* other than the city of Chicago whose jurisdiction is confined as aforesaid shall be dissolved and abrogated and shall be merged in and *consolidated* with the city of Chicago."⁹

It was expressly provided that nothing in this act should affect the sanitary, drainage or improvement districts, or public tuberculosis sanitarium or the board of education. Provision was made for a single board of park commissioners, and the powers of the library board were preserved. More definite provisions as to the House of Correction were made than in the charter act of 1907.

This measure, while less comprehensive than the charter act of 1907, provided for the consolidation of town and park district governments with that of the city; and would reduce to a considerable extent the present complexity of local government in Chicago. When submitted to popular vote, this measure failed to be accepted, mainly on account of temporary local political conditions. The act, however, contains provisions for resubmission, and may be adopted at a later time.

Chicago Bureau of Public Efficiency Reports. In recent years the Chicago Bureau of Public Efficiency has published a series of reports dealing with the complex machinery of local government in Chicago and plans for unification and consolidation. These include a series of reports on county offices, and reports on the *Park Governments of Chicago*, published in December, 1911; on the *Nineteen Local Governments in Chicago*, published in December, 1913, and reissued in a second revised edition in March, 1915; and on *Unification of Local Governments in Chicago*, published in January, 1917.

The report on *Park Governments* presented the results of an extended inquiry into the organization and methods of the various park boards, made at the request and with the co-operation of the three large park boards. This recognized the excellent results in many respects of the Chicago system of parks and boulevards; but also disclosed much waste and inefficiency mainly as a consequence of the lack of unity in park management. Recommendations for improvements in expenditure and efficiency under the existing organization were made; but it was urged that there should be a unified management of park facilities, which it was estimated would mean a money saving of \$500,000

⁹ Words in italics indicate changes from the corresponding provisions in the charter act of 1907.

a year, and would enable park revenues and benefits to be distributed more equitably.

The report on the *Nineteen Local Governments in Chicago* analyzed briefly the multiplicity of taxing bodies within the city, with illustrative charts, maps and tables of elective officials and expenditures.

The report on *Unification of Local Governments* outlined the problem of unification, discussed the defects of the existing arrangements and the benefits of unification, and recommended a number of measures, some of which could be taken without changing the constitution, and others requiring constitutional amendment. Appendices included a discussion of court consolidation, a skeleton plan of unification, tables of elections and expenditures, and illustrative charts.

Defects of present arrangements. The defects of the existing "hodge-podge of irresponsible governing agencies" were discussed by the Chicago Bureau of Public Efficiency under the following headings: useless overhead expenses, enormous election costs, cumbersome assessing machinery, what the courts cost, expensive law departments, the purchase of supplies and materials; rent, light and telephone service; park consolidation; sanitary district; and other economies possible.

Approximately \$500,000 a year is expended on the salaries of officers which would be unnecessary under a properly reorganized and unified government. The cost of elections which approximated \$1,000,000 in 1912, was more than \$2,000,000 in 1916. The average annual cost of assessing and collecting general taxes and of collecting special assessments over a four-year period amounts to approximately \$1,000,000. The cost of the five separate county courts and the municipal court of Chicago in 1915 was \$2,255,191, in which a large saving could be made through consolidation and reorganization of the administrative machinery. The cost of the law departments of the county, city, sanitary district and three large park boards in 1915 was \$984,287. The maintenance of several accounting agencies results in much needless overhead and other expense. Separate purchasing agencies and lack of standardization in supplies cause wasteful conditions. Space in public buildings is not effectively utilized; and the cost of rent, light and telephone service would be reduced by a unified system.

As previously estimated by the bureau, park consolidation alone would make possible a saving of \$500,000 a year. The continuance of the Sanitary District as a separate government invites waste. Other minor economies would be possible under a unified and reorganized government.

Estimates of present waste and possible savings for the local communities now outside of Chicago are more difficult to make, because of the still greater number of different authorities, and the relatively small amounts handled by each. But the existing com-

plicated governmental arrangements invite waste and duplication of effort; and the number of elections and elective officials impose a serious burden on the voters.

Benefits of Unification. The money savings estimated as possible through the consolidation of local governments have been summarized as follows:

1. Overhead expense by reducing the number of supervisory officials	\$550,000
2. Reducing the number of elections	836,000
3. Reorganizing and consolidating the agencies for assessing and collecting taxes	335,000
4. Consolidating and reorganizing the courts	236,000
5. Consolidating and reorganizing law departments	200,000
6. Consolidating and reorganizing accounting agencies	No estimate
7. Consolidating and reorganizing purchasing departments	500,000
8. Park consolidation (\$500,000 less amounts included in estimates for overhead expense and purchases)	326,000
9. Reducing expenses for rent, light and telephone service	150,000
10. Abolishing the Sanitary District government	No estimate
11. Consolidating and reorganizing other activities	No estimate
12. Consolidating and reorganizing maintenance and repair forces	No estimate
13. Abolishing Coroner's juries	30,000
14. Better control of finances and more cooperation and foresight in planning permanent improvements	No estimate
Total estimated annual economies	\$3,208,000

In addition to the estimates of direct money savings, equally if not more important results could be secured by greater efficiency, due to a better organization. A unified government could also foresee the future needs of the community and could formulate and execute plans to meet them much more efficiently and economically than is possible under existing conditions.

For the local communities outside of the present limits of Chicago, a unified government should also make possible considerable money savings; and would clearly permit a simpler and more responsible system of government, and a reduction in the number of elections and still more in the number of elective officers.

Proposed Plans and Problems. Several alternative plans have been suggested, from time to time, as a basis for the unification of local governments in Chicago.

In the first place may be noted plans based on the present constitution, including the amendment adopted as section 34 of Article IV. The proposed charter of 1907 was based on this amendment, and consolidated practically all the agencies which could be included under its provisions. The consolidation act of 1915, which is still open to adoption, is less comprehensive and omits the board of education and the public tuberculosis sanitarium from the consolidation.

Both of these measures omit from the consolidation the county government, (including the courts) and the sanitary district; and

under the present constitutional provisions these can not be included. These are serious limitations on the proposed consolidation. The county government and the several courts are among the most complex features of the present situation and any unification which does not deal with them will be far from complete.

City-County of Chicago. Another plan, proposed as early as 1870 and at times since, is to create the existing city of Chicago as a separate county; and to consolidate the county, city and other local governments. The remainder of Cook County may then be organized as one or more counties, or may be attached to other counties, as may be preferred by the districts affected.

This plan would make possible a practically complete consolidation of local governments within the present limits of the city of Chicago; and would leave the surrounding territory free to make other arrangements for county government. It gives rise, however, to some problems which need to be recognized and considered.

Chicago does not include the whole of the Sanitary District; and if this is to be included in the consolidation, special arrangements will have to be made. It has been suggested that, as the construction works are now substantially completed, the city should take over the maintenance of existing works, and other functions of the district, and could also be required to furnish additional drainage facilities for territory outside of the city, under suitable financial arrangements, as the city now furnishes water to some territory outside of the city.

A readjustment will also be necessary in respect to the forest preserve district. The forest preserves are mostly outside of the present limits of Chicago; but might be maintained by the city-county.

Some adjustment will also be necessary in connection with the construction and maintenance of state highways in the part of Cook County not included in the consolidated city and county.

To create a new county along the present irregular boundary of the city will cause some administrative difficulties. The present limits cut across township lines; and the transfer of land records for the territory outside of the city, and of court records affecting property outside of the city, will involve considerable work. Arrangements to meet this difficulty may be proposed. Provisions should also be made for future annexations to the city and county of Chicago, with the consent of the districts to be annexed.

Sanitary District Area. Some of these difficulties will be obviated or reduced if the Sanitary District be taken as the area for a combined city and county. This proposal would make possible the inclusion of the Sanitary District government in the consolidated system without difficulty; and it would reduce the administrative problems connected with changes in county boundaries. This territory would also include all of that likely to be annexed to Chicago for a considerable period; so that further changes in city and county boundaries would not be expected for some time.

It may be further suggested that these factors would be even more true if an area were taken including all of the townships any part of which is now in the sanitary district, and also Bloom township, which is largely urban and suburban in character.

Difficulties arising out of a rearrangement of county boundaries would be entirely eliminated, if the whole of Cook County were taken as the limits of the proposed city-county. But the half dozen townships in the northwest of Cook County and several townships in the southern part of the country are so largely agricultural and beyond the region of suburban villages, that it may not seem advisable to include them in what will be a distinctly urban community with a consolidated government.

Problems. Any plan to include territory now outside of Chicago in the proposed city-county raises other problems which must also be recognized and considered. These cities and villages outside of Chicago have not as yet indicated any desire to be annexed to Chicago. It may be that they will be more favorably disposed to unite in forming a comprehensive city-county. But their attitude will be a factor to be kept in mind.

It may be said that a large city should have some control over the planning and development of suburban areas which are likely to be annexed in the course of time. It is also urged that important public works and public utilities can be more satisfactorily managed for the whole metropolitan area than for the present separate municipal areas. This has been recognized by including most of these communities in the Sanitary District. In the same way a single water supply should give better and cheaper service than a number of separate plants. A well-organized school system should be more satisfactory than a series of local schools. Merger with Chicago would give the suburban districts access to better library facilities. Problems of transportation and lighting affect both the present city and suburbs; and existing conditions are not only unsatisfactory, but place the suburban residents at a disadvantage both as to prices and service. A city-county including the suburban districts would be a more satisfactory unit for local regulation of such public utilities, or for municipal ownership and operation, than the present city of Chicago.

It is also pointed out that tax rates are lower in Chicago than in neighboring suburbs. The tax rates in Chicago for the year 1918 were as follows:

South Park District (towns of South Chicago, Hyde Park and Lake).....	\$5.85
West Park District (West Chicago).....	6.24
Lincoln Park District (towns of North Chicago and Lake View)	6.21
Town of Jefferson	5.42 to 5.99

The prevailing tax rates in some of the more important suburban cities and villages in 1918 were as follows:

Berwyn	\$ 9.29
Blue Island	10.59
Chicago Heights	10.31
Cicero	12.35
Evanston	9.22
Harvey	9.71
Oak Park	9.87
River Forest	9.21
Riverside	9.18
Wilmette	10.38
Winnetka	9.93

In explanation of these higher tax rates in suburban communities, it is sometimes claimed that assessed valuations in the suburbs are relatively lower than in Chicago, and that in proportion to true value the taxes are not so much higher as the comparative rates indicate. How far this may be the case it is difficult to determine. But if this is true, the effect is to relieve the suburban residents from part of their fair share of state, county and sanitary district taxes.

On the other hand, it is urged that at least some of these suburban districts have distinct characteristics, which it is feared might be destroyed if absorbed in a single centralized urban government. Suburban residents have in many cases moved outside of the city, in order to enjoy the advantages of these communities, even at higher tax rates, and in order to have a more direct voice in local affairs. It is maintained that in some of these suburbs, the local schools are better than those in Chicago, and that local improvements are better looked after by local officials influenced by neighborhood public opinion. Census statistics on municipal finances indicate that in some suburban villages the local taxes and expenditures are lower per capita than in Chicago; in others, which are well-to-do residence districts, the total per capita expenses are higher than in Chicago, mainly on account of larger payments for schools and highways, while the cost of police and fire protection is less than in Chicago.

An examination of the taxes levied in recent years shows that school taxes are much higher and form a much larger proportion of the total taxes in most of the suburban communities than in Chicago. In many of the suburbs the school taxes are about twice, and in some cases about three times, the city or village taxes; while in Chicago school taxes are less than the city taxes. In so far as this is due to the greater expense of better schools, the present arrangements permit such communities to pay higher taxes for this purpose, if they wish to do so.

It has been suggested that some of these problems might be met by giving legal recognition to local districts in connection with local affairs such as street improvements, street cleaning, sprinkling, weed cutting and snow removal, and in connection with certain matters of local administration. A satisfactory plan of subordinate local districts in connection with the proposed unified government might lead the suburban communities to join voluntarily in a comprehensive plan.

If any considerable area outside of the present limits of Chicago is included, another problem will be as to the taxation of farm lands.

It may be urged that such lands should not be taxed for distinctively urban services and improvements, at least until they are brought within the area of suburban development. But this will require a departure from the rule of uniformity in taxation. The present system operates to discourage annexation until the suburban area is actually built up. An adjustment of tax methods would encourage annexation before development, and bring this under the control of the municipal government. Variations in taxes for different local districts within the city may also be advisable if such local districts are to be allowed to establish different standards of service in some matters from those maintained for the city as a whole.

Any change in county lines will also involve an adjustment of debts and other financial arrangements between the city-county and the remainder of Cook County. This will involve an analysis of the purposes for which debt has been incurred and the financial relations between the different parts of the present county. Debt incurred for public buildings and institutions taken over by the city-county should be assumed by the city-county; and credits may be allowed to the detached portions for payments made in taxes for such buildings and institutions. Debts for highways and other undertakings partly in the detached portions and transferred with them may be apportioned on an equitable basis, perhaps that of assessed valuation.

A detailed plan of financial readjustments can not be worked out in the state constitution; but authority should be given for dealing with this problem, subject to the consent of the communities concerned.

It has been suggested that the towns now in Cook County outside of Chicago would lose some advantages by being placed in another county; since under present conditions they have the benefit of county institutions and public improvements which are supported mainly by taxes paid by Chicago.

A thorough analysis of the relative benefits and expenses of the outside towns in connection with the Cook County institutions would be difficult to make. But an examination of the records of the inmates in the County Hospital and the County Institutions at Oak Forest for a single day indicates that the country towns receive less benefit from these institutions than their share of the county taxes, as shown in the table below:

Inmates of Cook County Institutions.

From	County Hospital (Oct. 1, 1919.)	Oak Forest (Sept. 26, 1919.)	Total	Percent- age of Inmates.	Percent- age of County Taxes.
Chicago.....	1,281	2,750	4,031	94.60	92.5
Towns in Sanitary District outside Chicago.....	51	104	155	3.64	5.4
Towns outside of Sanitary District.....	8	31	39	.91	2.1
Outside of Cook Co.....	6	30	36	.85	...
Total	1,346	2,915	4,261	100.	100.

The towns outside of Chicago pay about $7\frac{1}{2}$ per cent of the county taxes, and had less than 5 per cent of the inmates. The towns outside of the Sanitary District pay a little more than 2 per cent of the county taxes and had less than 1 per cent of the inmates. Most of the inmates from country towns came from a few towns, such as Cicero, Proviso, Thornton and Bloom; while Evanston which pays about 1.2 per cent of the county taxes had only 16 inmates, about 0.4 per cent. New Trier, paying about half as much in county taxes as Evanston, had the same proportion of inmates (8). Oak Park, which pays more in county taxes than New Trier had even fewer inmates in these county institutions.

In the care of county roads, the expenditure is in the towns outside of Chicago, and more than 92 per cent of the taxes is paid by Chicago. But the program for the construction of county roads is likely to be completed before the plans of consolidation can be carried out; and it may be presumed that Chicago will take over its share of the bond issues for their construction.

Other plans. Another possible alternative solution which may be mentioned would be to combine the county, the courts and the sanitary district, under a unified and simplified organization; and also to consolidate in a separate government the various governments now within the city of Chicago. This would permit a good deal of simplification in each of the two governments; but would not secure all of the advantages of complete consolidation even within the city; while it would leave untouched the complex problem of overlapping districts in the suburban communities.

In the general assembly of 1919 a bill was introduced for a Metropolitan Court, consolidating the various courts in Cook County, including the Municipal Court of Chicago, into one comprehensive court. While prepared with a view of meeting all existing constitutional provisions, it is doubtful if this was accomplished; and it may be questioned if any plan of court consolidation will be possible without changes in the state constitution.

County Readjustments Outside of Chicago. Any plan for city-county consolidation which does not embrace the whole of Cook County will involve a rearrangement and readjustment of county government for the parts of Cook County not included in the consolidated city-county. Several suggestions have been made for this; and these may be worked out and combined in different ways, so as to offer a considerable number of alternatives. It will not be advisable for the constitutional convention to undertake a definite solution of these problems; but attention may be given to some of the various plans suggested, so that constitutional provisions may be framed which will permit the problem to be worked out by the general assembly with the consent of the local communities.

One plan is that indicated in the resolution first introduced in the general assembly of 1903, relating to the constitutional amendment proposed that year. This resolution contained a provision authorizing the creation of not more than two counties out of the part of Cook County outside of Chicago. A glance at the map of Cook County,

however, suggests the advisability of considering the possibility of three counties, each of which would be geographically more compact than the whole area of Cook County outside of Chicago, or any arrangement for two counties.

Another general plan which has been suggested is to authorize the annexation of portions of Cook County to the adjoining counties of Lake, Kane, DuPage and Will. Combinations of these general plans may also be considered, under which some portions of Cook County now outside of Chicago might join a new city-county; some parts might be annexed to adjoining counties; while other portions might be organized as one or more counties.

Without attempting to present all of the possible arrangements, suggested outlines for the application of these plans may be indicated and some data relating to these suggestions may be set forth.

The creation of a single new county out of the whole territory of Cook County now outside of Chicago would provide a county of nearly 800 square miles, with a population of over 300,000. This would be larger in area than most Illinois counties, and with a much larger population than any other county except the proposed city and county of Chicago. But the area of the county would be extremely irregular; and its shape and the means of transportation would make any location of the county seat difficult of access to considerable parts of the county.

A division into two counties would reduce these difficulties to some extent; but would leave them in large measure for at least one of the two counties.

The formation of three counties would make possible counties compact and regular in form, and each with a population larger than the majority of Illinois counties; but their area would be less than the present minimum limit of 400 square miles for new counties. A possible arrangement of this kind is outlined below.

	Area Sq. Mi.	Population.		Assessed Valuation.
		1910.	1919.	1918.
Northern County:				
Barrington	36	1,953	.....	\$ 1,089,814
Hanover	32	1,649	.....	944,623
Palatne	36	2,147	.....	1,042,408
Schaumberg	31	954	.....	561,646
Wheeling	36	3,845	.....	1,058,521
Elk Grove	27	1,302	.....	624,490
Northfield	35	2,675	3,105	890,377
Maine	29	6,650	8,938	1,794,722
New Trier	16	12,532	.....	6,933,148
Niles	23	4,203	5,647	1,441,079
Evanston	6	24,978	33,889	14,011,221
	307	62,888		\$30,392,049
Western County:				
Leyden	31	2,813	5,780	\$2,238,343
Norwood Park	7	5,251	2,347	416,493
Proviso	31	24,465	42,506	6,261,021
Riverside	2	1,980		1,696,617
River Forest	2	2,456		1,137,754
Oak Park	4	19,444	36,465	9,401,427
Cicero	6	14,557	57,488	6,351,620
Berwyn	3	5,841		2,352,628
Stickney	13	962		2,159,582
Lyons	36	11,289	.....	5,348,341
	135	89,058	.....	\$37,363,826
Southern County:				
Lemont	20	4,296	3,841	\$ 761,955
Palos	36	1,405	1,164	563,532
Worth	35	7,154	.....	2,909,688
Calumet	4	5,187	.....	1,273,984
Orland	36	1,230	1,119	561,990
Bremen	36	1,898	2,008	1,044,792
Thornton	47	22,067	31,881	7,384,751
Rich	36	1,301	.....	1,055,151
Bloom	47	18,339	22,360	3,999,645
	297	62,877	.....	\$19,555,488

If all of the territory of Cook County outside of Chicago preferred to be annexed to other counties, the northern group of townships might be annexed to Lake County, the western group to Du Page County, and the southern group to Will County. But a somewhat different arrangement may be suggested as perhaps more probable, as follows:

	Area Sq. Mi.	Population 1910.	Assessed Valuation. 1918.
To Lake County:			
Palatine	36	2,147	\$ 1,042,408
Wheeling	36	3,845	1,058,521
Northfield	35	2,675	890,377
New Trier	16	12,532	6,933,148
Niles	23	4,203	1,441,079
Evanston	6	24,978	14,011,221
	152	50,380	\$25,376,754
Lake County	394	55,058	25,510,446
	546	105,438	\$50,887,190
To Kane County:			
Barrington	36	1,953	\$1,089,814
Hanover	32	1,649	944,623
	68	3,602	\$ 2,034,437
Kane County	540	91,862	37,562,580
	608	95,464	\$39,597,017
To Du Page County:			
Schaumburg	31	954	\$ 561,646
Elk Grove	27	1,302	624,490
Maine	29	6,650	1,794,722
Leyden	31	2,813	2,238,343
Norwood Park	7	5,251	416,493
Proviso	31	24,465	6,261,021
Riverside	2	1,980	1,696,617
River Forest	2	2,456	1,137,754
Oak Park	4	19,444	9,401,427
Cicero	6	14,557	6,351,620
Berwyn	3	5,841	2,352,628
Stickney	13	962	2,159,582
Lyons	36	11,289	5,348,341
	222	97,964	\$40,344,684
Du Page County	340	33,432	17,276,478
	562	131,396	\$57,621,162
To Will County:			
Lemont	20	4,296	\$ 761,955
Palos	36	1,405	563,532
Worth	35	7,154	2,909,688
Calumet	4	5,187	1,273,984
Orland	36	1,230	561,990
Bremen	36	1,898	1,044,792
Thornton	47	22,067	7,384,751
Rich	36	1,301	1,055,151
Bloom	47	18,339	3,999,645
	297	62,877	\$19,555,488
Will County	850	84,371	35,123,490
	1,147	147,248	\$54,678,978

The annexation to Kane County would be more appropriate in view of the fact that part of the city of Elgin is now in the township of Hanover.

The above rearrangement would about double the population of Lake and Will counties, and increase the population of Du Page County about three-fold. It would more than treble the assessed valuation of Du Page County, would double that of Lake County, and increase that of Will County more than 50 per cent. It would make all of these counties among the largest in the state outside of Chicago.

The table below gives certain statistics as to Cook County and adjoining counties which may serve as a basis for estimates as to the probable effects of annexing parts of Cook County to these counties.

County.	Area. (Sq. Miles.)	Estimated Population 1919.	Assessed Valuation 1918.	County Tax Rates (cents) 1918.
Cook County.....	993	2,800,000	\$1,170,075,143	60
Du Page County.....	340	40,000	17,263,612	61
Lake County.....	394	70,000	25,504,516	72
Will County.....	850	100,000	35,123,745	75

The large increase of population to these adjoining counties by the annexation of parts of Cook County, with a smaller proportionate increase of area, should involve less than a proportionate increase in county expenses, and would probably make possible a considerable reduction in their county tax rates, if these counties were thus enlarged.

It will also be noted that the assessed valuation of each of the three parts of Cook County suggested as possible new counties, as well as their population, is comparable to that of the adjoining counties; and they could therefore be expected to maintain the expense of a separate county government on the same basis as the neighboring counties, if this solution of the problem is preferred.

Constitutional Obstacles. As already noted, the constitutional amendment of 1904 permits the consolidation of the various local governments within the present or future limits of the city of Chicago; but it does not permit the consolidation with the city of the courts or the county or sanitary district government. The provisions of the present constitution which prevent any comprehensive unification of local government may be noted as follows:

In Article IV, sections 22 and 34 relating to special legislation.

In Article VI, on the judicial department, sections 18 to 22 relating to county courts, probate courts, justices of the peace and constables and state's attorneys; and sections 23 to 28 relating to courts of Cook County.

In Article VIII, on education, section 5 providing for the election of the county superintendent of schools.

In Article IX, on revenue, the provisions of sections 1, 9 and 10 requiring uniformity of taxation; and section 12 on municipal debts.

In Article X, on counties, sections 1 to 3 relating to new counties and changes in county boundaries; section 7 on the Cook County board

of commissioners, and section 8 to 12 providing for elective county officers and relating to their fees and compensation.

Some of these constitutional obstacles to consolidation may be removed by changes made to meet problems of general application throughout the state. If the detailed provisions relating to courts inferior to the supreme court are omitted or modified so as to leave their organization and jurisdiction to the general assembly; and if the provisions relating to uniform taxation and requiring the election of a numerous list of county officers are substantially changed, the new provisions may be drafted so as to permit a comprehensive and unified system of local government for Chicago and Cook County.

But even with considerable changes in some of the restrictive sections, some provisions which may seem to the Convention desirable for the rest of the state will operate to prevent a satisfactory solution of local problems in Cook County. This may make it necessary to consider some provisions specially applicable to Cook County, as was attempted in the amendment of 1904. If this method is followed, care should be taken to frame as simple provisions as possible, free from specific details; for such details will need to be modified from time to time by legislation or local action.

Some provisions of the present constitution which stand in the way of unification in Cook County may cause little or no trouble in other parts of the state, and changes will be urged mainly on account of conditions in Chicago. For illustration, the provision that no line of a new county shall pass within ten miles of any county seat of a county or counties to be divided, absolutely prevents the formation of a consolidated city-county in which the county line will necessarily be identical with the boundary of the county seat. If it is considered desirable to retain the ten-mile condition for other parts of the state an exception will be needed to permit the formation of any proposed city-county.

The minimum limit of 400 square miles for new counties may be met if an area covering little more than the present sanitary district of Chicago is taken. But to permit a consolidated city-county corresponding to the present limits of the city of Chicago this minimum would have to be waived. If large cities other than Chicago are to be authorized to be organized as separate counties, the minimum area will have to be altered or waived in such cases.

It may be assumed that the general principle of local consent for alterations of boundaries, and for additions to or divisions of counties will be continued. But some consideration may be given to the question whether all of the present constitutional requirements are necessary. For example, may not a majority of those voting in territory proposed to be transferred be accepted as sufficient, in place of requiring a petition by a majority of the voters?

Attention is directed to the table appearing in the appendix which shows the bonded indebtedness of the local governments having jurisdiction within the limits of the city of Chicago. The total bonds authorized (including those outstanding and those unsold) amount to more than \$128,000,000. Several of the governments, such as the County, and the Sanitary District, extend beyond the limits of Chi-

cago, but their debts are involved and are to be adjusted in any scheme of local government consolidation. In connection with the issuing of bonds, it should be pointed out that certain governments, such as the Sanitary District of Chicago and the Forest Preserve District, are not required by law to obtain the approval of the voters; and that other governments are prohibited from issuing bonds without a sanctioning referendum. For a number of reasons it is impossible to name the exact relation between the bonded debt of the community and the taxable property. The 1919 valuation figures are not yet available. A large proportion of the city's unsold bonds have been authorized on the new basis of valuation as provided by the 1919 general assembly, hence the 1918 valuation figures cannot be used. Furthermore, a certain amount of bonds outstanding are exempt from the constitutional limit of five per cent of the assessed valuation. Also, the total indebtedness is based on the valuations of geographical areas that are not all co-extensive with each other. After making allowances and adjustments, however, it is safe to say that the combined debt of the community is considerably in excess of the constitutional limit of five per cent of the assessed valuation.

IV. CITY-COUNTY CONSOLIDATION IN OTHER STATES AND COUNTRIES.

In a number of other states provision has been made for the consolidation to some extent of city and county government for large cities; and in several European countries there is a similar consolidation of local government for larger cities.

New York city includes five counties; Philadelphia city and county are identical in area; Baltimore, St. Louis and San Francisco combine city and county functions; and Boston includes most of Suffolk County. In all of these cases the city government includes some county functions and absorbs some county officers. In Denver, city and county governments have been more thoroughly consolidated. In the District of Columbia, a single government exercises some of the functions elsewhere divided between city, county and state.

In Virginia, all cities are excluded from the counties; and the city government provides for county functions. Several state constitutions have provisions authorizing larger cities to be organized as counties. In Minnesota, cities of over 20,000 may be so organized; and in Michigan and Missouri, cities of over 100,000. The California constitution contains a general provision authorizing city and county consolidation, and special provisions for San Francisco and some other counties.

Plans for city-county consolidation have been actively urged in recent years in a number of larger American cities.

In England municipalities of over 50,000 population are regularly organized as county boroughs. In Prussia most cities of over 25,000 are classed as *Kreis-stadte*, combining the functions of cities and the district known as the circle, which corresponds somewhat to the county.

An examination of some of these cases of consolidated local government should be of value in considering the problem in Chicago and Cook County.

New York City. There are now five counties within the limits of the city of New York; and the county governments have been to some extent consolidated in and merged with the city government. But the counties are still retained as separate units for the administration of justice and the election of certain county officers prescribed by the state constitution.

When the first counties were established in New York, in 1683, New York county comprised Manhattan Island and some small neighboring islands; and the first charter of New York City, in 1686, gave

the city the same boundaries as the county. Thereafter the two were generally referred to as "The City and County of New York". With some minor changes, the boundaries remained unaltered until 1873, when three towns in Westchester were made part of the city and county of New York; and in 1895 parts of other towns and villages in Westchester county were added to the city and county of New York.

From the beginning, the county and city government were closely connected. The sheriff of New York County was also sheriff for the city. In 1813 it was expressly provided that the chamberlain of the city and county of New York should be considered the county treasurer. When county boards of supervisors were established in New York none was provided for New York county; and the council, or mayor and aldermen, of the city were declared to be the board for that county. From 1857 to 1874 a separate board of supervisors was provided; but in the latter year its powers were again transferred to the board of aldermen of New York City. From time to time, however, various county officers were provided, who acted independently of the city government.

Three of the other counties now included in New York City (Kings, Queens and Richmond) were also among the original counties created in 1683. Their government was similar to that of other counties and distinct from that of the villages and cities which developed within their limits. In 1854, however, when the city of Brooklyn included a large part of Kings county, the city and county governments were more closely inter-related; and in 1895 a larger degree of consolidation was brought about, similar to that effected in New York city and county in 1874. The powers of the county board of supervisors were devolved upon the common council of the city; and several county and city officers were abolished and absorbed in other offices.

When the greater New York charter was passed in 1897, it included in New York City the counties of New York, Kings and Richmond, and the western part of Queens County. The remainder of Queens county was about the same time organized as Nassau County. All of the former municipal or public corporations within the limits of the greater city, except the four counties, were abolished and merged in the new city government. Five new divisions, known as boroughs, were, however, created for local municipal purposes.

As to the counties, substantially the same transfer of functions, which had been previously made in the counties of New York and Kings, were now made from the former cities of New York and Brooklyn and from the counties of Queens and Richmond to the new city of New York. The powers of boards of supervisors were transferred to the board of aldermen and to some city officers and boards. Statutory elective county offices and some appointive county offices were abolished and their functions transferred to city officers. There remained, however, in each county a number of elective county officers, provided for by the state constitution, which could not be abolished or consolidated with the city government; and some appointive county

officers were also left unchanged. In 1914 a new county of Bronx was organized, comprising the region previously in Westchester county; and for this county a similar staff of county officials has been provided.

The extent of consolidation of county and city government may be noted more definitely. In the first place, the work of financial administration has been completely consolidated. Appropriations and tax levies for county purposes are made by the city board of estimate and apportionment and the board of aldermen; and the same city authorities determine salaries for county officers, so far as they are not fixed by state law. The assessment of county taxes is made by the city department. The city chamberlain acts as treasurer for all of the five counties. The city comptroller audits county expenditures.

Supervision of county property and public works, ordinance powers and other auxiliary powers, formerly vested in the boards of supervisors, are now exercised by the board of aldermen. The direct management of county property is exercised by various city departments, under the general administrative control of the mayor. All local charities are in charge of the city departments.

On the other hand, in the administration of justice and related matters, there continues in each county separate courts and county officials. New York County is a judicial district for the election of supreme court judges; and also elects seven judges of the court of general sessions and two surrogates, or probate judges. The other counties elect county judges, and the counties of Kings, Queens and the Bronx each elects a surrogate. The following constitutional officers are elected:

Supreme Court Judges (New York County 1 district).

15 County Judges (7 in New York, 5 in Kings, 1 in each of the other counties).

5 Surrogates (2 in New York, 1 each in Bronx, Kings and Queens).

5 County Clerks.

5 District Attorneys.

3 Registers (New York, Bronx and Kings counties).

5 Sheriffs.

In addition there are the following appointive county officers, provided by statute:

3 Commissioners of Records (2 in New York and 1 in Kings county).

5 Commissioners of Jurors.

5 Public Administrators.

The cost of county government for 1914 was \$7,348,010, as shown below:

New York County	\$4,108,855
Bronx County	592,047
Kings County	1,997,863
Queens County	482,483
Richmond County	166,762
Total	<u>\$7,348,010</u>

County expenditures had increased from \$3,701,916 in 1901, largely as the result of mandatory special legislation, which in county matters is not subject to the mayor's veto, as is special city legislation. Nearly 70 per cent of the total expenditures are mandatory; and 9 per cent more is for items for which any reasonable expense necessarily incurred must be paid; leaving about 21 per cent of the county expenditure discretionary with the local authorities.

In 1915 a study of county government within the City of New York was prepared for the constitutional convention of that year by the Commissioner of Public Accounts and City Chamberlain. This pointed out the waste and inefficiency of the separate county organizations, and urged a consolidation of the several counties, and the merger of some of the county offices with municipal departments. The plan proposed would have reduced the number of county departments from 40 to 8, two of which would be merged with city offices, and would have simplified elections and secured better official service and more economical administration. The reduction in expenses was estimated at \$1,000,000 a year.

No action was taken by the constitutional convention to unite the county governments. The proposed revised constitution contained provisions for the consolidation of local courts in the city; but this also failed on account of the defeat of the constitution.

Some mention may be made of the administrative subdivisions of New York for municipal purposes. The greater city is divided into five boroughs, corresponding to the five counties; and in each borough there is elected a borough president, who is a member of the city board of estimate and apportionment, and has supervision over borough property and public works including street paving and lighting, sewers and public buildings. The boroughs are also utilized as administrative districts by some of the centralized city departments, as the parks; but these are not under the control of the borough president.

The city is also divided into 25 local improvement districts, for each of which there is a local improvement board, consisting of the borough president and the aldermen (usually three) elected within the district. These boards initiate and authorize local improvements, subject to the approval of the city board of estimate and apportionment (and in cases where the city's share of the total cost is over \$500,000, subject also to the approval of the board of aldermen).¹

Boston, Suffolk County and the Metropolitan District. Boston comprises much the greater part of Suffolk County, both in area and population; and a good deal has been accomplished in the con-

¹ Arthur Ludington: *The Relation of County to City Government in New York*. In *Proceedings of the American Political Science Association*, VII, 73 (1911).

Henry Bruere and Leonard M. Wallstein: *Study of County Government within the City of New York and a plan for its Reorganization* (1915).

solidation of city and county government for this territory. But Boston and Suffolk County comprise less than half of the metropolitan urban area, which includes parts of five counties, with a complex array of municipal authorities and state boards, subject to no general supervision except that of the state legislature.

Suffolk County includes, besides the city of Boston, the much smaller city of Chelsea and the two towns of Revere and Winthrop. The consolidation of city and county functions began when the town of Boston was organized as a city in 1821-2. At that time, the court of session for Suffolk County was abolished, and its administrative functions (corresponding to those of the county board) were transferred to the mayor and aldermen of Boston. By the present city charter of 1909, these functions are vested in the city council and the mayor. The treasurer and the auditor of the city of Boston act as treasurer and auditor for Suffolk County. The ownership and jurisdiction of all county property is vested in the city of Boston; and the entire county expenses, including those of judicial administration, are paid by the city of Boston.

Under the Massachusetts judicial system, there are no locally elected judges. The judges and justices of the supreme judicial court, the superior court (the judges of which hold sessions in the several counties), the probate court, and the district and police courts, are all appointed by the governor and council; and are paid by the commonwealth, except the justices of the district and police courts who are paid by the county. There are, however, seven elective county officers and a number of appointive county positions. The elective county officers are: Register of probate, register of deeds, district attorney, sheriff, clerk of the supreme judicial court and two clerks of the superior court, "one for criminal and one for civil business." Among the appointive positions are the medical examiners (who act in place of the coroner) and index commissioners. In 1910 there were a total of 596 paid county officials and employees, while for the city there was a total of 13,068.

The relations of Chelsea, Revere and Winthrop to county and city administration are varied and peculiar. They are part of Suffolk County for the administration of justice and for the election of county officers. In some matters, Revere and Winthrop are under the jurisdiction of the county commissioners of Middlesex County; and the aldermen of Chelsea exercise in most cases the functions of county commissioners. These three municipalities also are freed from taxation for county purposes. This situation has given rise to some criticism; and there has also been complaint of the unsatisfactory condition of county finances, and of the fact that county employees are not subject to the civil service law and regulations.

It is also urged that under present conditions the court expenses borne by the city of Boston are further increased by the trial in Suffolk County of a large and growing number of cases from other counties in the metropolitan area, since the courts in

Boston are more convenient to many parties, and especially to the attorneys whose offices are located in Boston.

The metropolitan area of eastern Massachusetts has a population of more than a million and a half, of which about 700,000 (less than half) is within the city limits of Boston. Within the metropolitan area are all of one county and portions of four others (Suffolk, Middlesex, Essex, Norfolk and Plymouth), 39 municipalities, a state metropolitan park commission, and a state metropolitan water and sewer board; also a rapid transit commission, the police commissioner for Boston (appointed by the governor), and a state fire prevention commissioner.²

Under these conditions there have inevitably arisen conflicts of jurisdiction, and duplication and waste of effort; and important metropolitan problems, such as city planning, traffic and transportation, housing and industrial education have had no satisfactory means of being effectively solved.

In 1896 a metropolitan district commission, appointed by the state legislature to investigate "the subject of a general municipal administration for the city of Boston and adjoining municipalities," reported a plan for combining all the municipalities within the metropolitan area into a single county. It was proposed to vest in this county, in addition to the ordinary county functions, the functions exercised by the several state metropolitan boards. For this county, there was suggested a county council, with representatives from the several cities and towns, which were to retain their autonomy in matters of local government.

No action was taken on this plan. There was opposition to abolishing the state boards; and to the changes in county lines, especially to including the "shire towns" (county seats) of Dedham and Cambridge, which have important county buildings, land records and archives. But more important was the objection of the cities and towns which feared the loss of their local autonomy.

More recently (in 1911), a committee of the Boston Chamber of Commerce recommended a plan to "federate" the cities and towns of the metropolitan area, by means of a metropolitan council of representatives of the 39 municipalities, with advisory powers only. This had in mind an official conference of municipal executives for the consideration of intra-municipal problems. A somewhat similar proposal was made by a "metropolitan plan commission" established by the legislature in 1911. But no definite steps have been taken as yet toward carrying out even this limited plan of co-operation.

In 1919 Mayor Andrew J. Peters of Boston issued an appeal for the federation of the metropolitan cities and towns into a Greater Boston.³

² Suffolk County includes 4 municipalities; Middlesex, 17; Essex, 4; Norfolk, 12; and Plymouth, 2.

³ O. C. Hormell: *The City and County in Massachusetts*, Proceedings of the American Political Science Association, VII, 61 (1911).

Report of the Metropolitan District Commission, 1896, "Real Boston", published by the Boston Chamber of Commerce, March, 1911.

O. C. Hormell: *Boston's County Problems*, Annals of the American Academy of Social and Political Science (1913).

Andrew J. Peters: *Greater Boston*. An appeal for the Federation of the Metropolitan Cities and Towns (1919).

Philadelphia City and County. Since 1854 the city of Philadelphia has been co-terminous with the county of Philadelphia; and the various subordinate local governments within the county before that time have been consolidated with the city government. There has also been some consolidation of city and county government; but the county government remains in large part legally distinct from that of the city.

Philadelphia was first organized under a charter granted by William Penn in 1691; and during most of the colonial period was governed under a charter of 1701 by a close corporation, similar to that of English boroughs before 1832. In 1789, a legislative charter established a more popular system of government, which was frequently modified by later acts, based on varied and conflicting lines of policy. By the middle of the nineteenth century the city government formed a complex system, with responsibility divided between the mayor and a dozen council committees. At the same time the region outside the city had become closely settled, and was governed by a miscellaneous series of overlapping local authorities. In addition to the county and the city of Philadelphia, there were nine other incorporated districts, six boroughs, thirteen townships, and ten other legislative commissions for special purposes (care of the poor, the port, health, etc.,) a total of "forty corporate or quasi-corporate bodies to manage the affairs of the smallest county in the state, and with the help of them all, it was undoubtedly the worst governed, from the number of limited territorial divisions and incongruous powers and conflicting interests of these various governing and executive institutions."⁴

After ten years of agitation and discussion, a consolidation act was passed on February 2, 1854. This enlarged the city limits so as to include the territory in the county of Philadelphia, and abolished or absorbed the following local bodies:

The former city of Philadelphia.

Nine incorporated districts: Southwark, Northern Liberties, Kensington, Spring Garden, Moyamensing, Penn, Richmond, West Philadelphia and Belmont.

Six boroughs: Germantown, Frankford, Manayunk, White Hall, Bridesburg and Aramingo.

Thirteen townships: Passyunk, Blockley, Kingessing, Roxborough, Germantown, Bristol, Oxford, Lower Dublin, Moreland, Northern Liberties (unincorporated), Byberry, Delaware and Penn.

No radical change was made in the machinery of government of the former city, which was merely extended to the new territory with some changes of detail especially in regard to finance administration. The municipal organization was highly complicated, with a large number of elective officers, and practically independent authorities, and with no effective supervision or central control.

At the same time the identity and autonomy of the county was distinctly preserved. County commissioners, treasurer and auditors were discontinued, and their functions transferred to city

⁴ E. K. Price. *History of the Consolidation of Philadelphia* (1873) p. 53.

officials,⁵ but all other county officers were retained. These included the following elective officers: Judges, register of wills, recorder of deeds, clerk of quarter sessions, district attorney and coroner; also a prothonotary, appointed by the board of judges. The city councils were given no control over county officers except that they made appropriations for their expenses, and that inspectors of county prisons (elected by wards) were placed under their supervision.

The charter of 1854 was frequently amended and modified by subsequent legislation. Most of these changes involved matters of detail, and for 30 years there was little tendency to depart from the loosely connected group of public officials. An Act of 1870, establishing a public buildings commission, emphasized the tendency towards irresponsible organs of local government.

Following another period of local discussion, the so-called Bullitt charter for the city of Philadelphia was passed by the legislature in 1885; and went into effect in April, 1887. This made far-reaching changes in municipal organization, in the direction of concentration of administrative authority. The number of departments was reduced to nine, placed under the executive control of the mayor, and the councils were limited to legislative functions. The two large councils were, however, retained. Nor was any change made in regard to county government at this time.

A further revision of the Philadelphia charter in 1919 makes important changes in council organization. The bicameral system is abandoned, and a single small council has been established. This will be elected by the same eight districts as elect state senators, the number of members from each district being based on the number of voters, making a body of 21 members, in place of the former two councils of 145 members. This continues the recent tendency towards concentration of authority.

The courts and county officers, however, remain as before. There are in Philadelphia county five courts of common pleas with three judges each, an orphan's court with five judges, and a municipal court with nine judges. County officers include district attorney, sheriff, prothonotary, register and clerk of the orphan's court, recorder, clerk of the court of quarter sessions, treasurer, county controller, receiver of taxes, coroner and solicitor.

Proposals for the merging of city and county officers and functions are being discussed in Philadelphia and will be presented to a Commission on the Constitution, to be appointed by the Governor.⁶

Baltimore. Baltimore was laid out under an act of 1729; and in 1768 the town was made the county seat of Baltimore County. In 1798, it was incorporated as a city.

⁵ A Supreme Court decision in 1883 distinctly recognized the city controller as a county as well as city officer; and the city treasurer and city commissioners had a similar status. *Taggart v. Commonwealth*, 102 Pa. 354.

⁶ Allinson and Penrose: *Philadelphia 1681-1887*. *Small's Legislative Hand Book*, 1918. *National Municipal Review*, VIII, 417 (August, 1919).

In 1851, Baltimore City was separated from Baltimore County; and the state constitution of that year, by provisions for courts and for the election of members of the legislature, judges, court clerks, register of wills, sheriff and state's attorney, gave the city the status of a county, though not officially naming it as such. Since then the local government has combined city and county functions.

The state constitution of 1867 also contained many provisions relating to Baltimore City. In provisions for the election of members of the legislature, judges, register of wills, sheriff and state's attorney, it was placed on the same footing as a county. There were also special provisions for a series of six courts in Baltimore City, and a distinct article on the city of Baltimore dealing with its municipal government.

In 1888 the area of the city was nearly doubled, by the annexation of a part of the surrounding belt of suburbs. In 1898 a new charter prepared by a commission was passed by the general assembly.

After the adoption of the home rule amendment to the Maryland constitution, a charter was framed and adopted in November, 1917. This did not attempt any fundamental changes in the city government; but in the main codified the existing arrangements and placed them on the new home rule basis. The elective city officers are the mayor, comptroller and president of the second branch of the city council, elected at large, and members of each branch of the council elected by districts and wards.

The city charter, however, does not include provisions relating to the courts and county officers, which are definitely provided for by the state constitution. There are six different courts in Baltimore city: two circuit courts, criminal court, superior court, court of common pleas and city court. The judges of these courts also form collectively the supreme bench of Baltimore City, which acts as a central coordinating agency. There is also an orphans' court of three judges.

Clerks are elected for each court, except the supreme bench, and a register of wills for the orphans' court. Other elective court officers are the state's attorney, sheriff and surveyor. Appointed officers include coroners, notaries public, justices of the peace (by the governor), and constables (by the mayor and council).⁷

District of Columbia. In the local government of the District of Columbia, functions elsewhere exercised by cities, counties and states are combined to a considerable extent; though the several local authorities are not effectively organized into a single consolidated government; and some local matters are controlled directly by agencies of the United States national government.

The territory ceded to the United States by the states of Maryland and Virginia for the seat of the national government formed a part

⁷Cyclopedia of American Government, I, 105. B. C. Steiner: The Institutions and Civil Government of Maryland. A. S. Niles: Maryland Constitutional Law (1915). Baltimore City Charter, 1917.

of two Maryland and one Virginia counties, and included the two incorporated towns of Alexandria, Va. (organized in 1749 and incorporated in 1779) and Georgetown, Md. (incorporated in 1789). From the cession in 1790 until 1801, the two parts of the district remained under the laws of the two states.

In 1801 Congress divided the district into two counties: Washington, lying east of the Potomac river, and Alexandria west of the river. A year later the city of Washington was incorporated by Congress. These governing agencies continued until 1846, when Congress retroceded to Virginia the part of the District west of the Potomac. In the remainder of the District, the county of Washington, the town of Georgetown and the city of Washington continued in existence until 1871. From time to time acts of Congress were passed relating to these local governments. In 1861 the whole District was formed into a Metropolitan Police District.

In 1871 the separate county and municipal governments were abolished; and a new government was established for the District, similiar to that of the organized territories, but also exercising municipal functions. There was provided a governor, secretary, board of health and board of public works, all appointed by the President with the approval of the Senate. Members of the council were appointed in the same way; while a house of delegates and a delegate in Congress were elected by popular vote. The police board was continued, and there were also four boards of education.

Under this territorial government extensive plans for public improvements were undertaken, beyond the financial resources of the District, which in a few years became bankrupt. In 1874 the territorial government and the elected delegates were abolished, and replaced by a temporary board of commissioners, appointed by the President with the approval of the Senate, and vested with the executive powers of the governor and board of public works. But the separate boards of police, health and education continued in existence.

In 1878 another law for the government of the District was enacted, which has remained the basis of District government until now, though subject to many changes. This law aimed at centralizing and consolidating local administrative authority. The board of commissioners was continued as the main body in control of local administration. Two commissioners are appointed by the President from residents of the district, the third is an officer detailed from the engineer corps of the army. The commissioners have enumerated powers of passing local ordinances, and have general supervision over the administrative officers and departments, each commissioner being assigned to a distinct group of subordinate offices. In line with the policy of centralization in 1878, the police and health boards were abolished, and the board of education was made subordinate to the commissioners. In addition to the usual municipal officers, the commissioners have supervision over the assessor, tax collector, coroner, and insurance superintendent. Recently the commissioners have been made ex-officio a public utilities commission for the District.

But the authority of the commissioners does not cover the whole field of District affairs; and in recent years there has been an increasing tendency to divide authority. The district courts and their officers are independent of the commissioners. A board of charities created in 1900 is appointed by the President and is largely independent, as is also the board of education created in 1906. The supervision of banks is vested in the Comptroller of the Currency. Practically the whole park system and a large part of the water supply system are under the control of the Chief of Engineers of the United States Army. St. Elizabeth's Hospital for the Insane is under the U. S. Department of the Interior, as is also the Columbia Institution for the Deaf and Dumb. The district jail and reform schools are under the supervision of the Attorney-General of the United States.

The courts of the District include a municipal court, police court, juvenile court, supreme court and court of appeals. All of the judges are appointed by the President, with the approval of the Senate, as are also the marshal, United States Attorney and Recorder of Deeds. The several courts appoint their clerks, and bailiffs are appointed by the police court. The District supreme court holds special terms as the circuit court, the criminal court, the district court of the United States, the equity court, the probate court and the bankruptcy court.

Finally, Congress is the legislative and appropriating authority for the District. The ordinance powers of the commissioners are less than that of municipal councils; and congressional statutes for the District deal with matters often found in municipal ordinances as well as matters dealt with in state laws. Appropriations are made and taxes are levied by Congress.

While, therefore, some measure of consolidation has been accomplished, there is room for further concentration of authority both as to matters of local administration and as to local courts, and also room for a more effective organization of the relations of district officials to the United States government.⁸

St. Louis. The union of city and county functions in the local government of St. Louis bears some resemblance to that of Baltimore. In both cases, the city was separated from the county of which it had previously formed a part; while in the case of Philadelphia and San Francisco, consolidation was brought about by extending the city to include the same area as the county.

St. Louis was incorporated as a town in 1809, when within the territory of Louisiana; and received a city charter from the Missouri legislature in 1822. This charter was frequently amended, and also supplemented and modified by special laws; and changes increased in number especially after 1850. In 1870 a revised charter was enacted. At that time there was vigorous complaint of the control of city affairs by the state legislature, and the frequent changes by special legislation;

⁸ W. F. Dodd: Government of the District of Columbia. (1909), Congressional Directory.

and also of extravagance of the county government. County taxes were paid mostly by the city, and expended very largely outside of the city; and the double system of government was felt to involve useless waste.⁹

A Taxpayers League, organized in 1872, was influential in advocating the separation of the city and county, in the constitutional convention of 1875, and in securing the subsequent adoption of a new charter.

In the constitution of 1875, provisions were adopted requiring general laws and prohibiting special legislation on local government, and also placing restrictions on municipal debt. In addition a series of provisions were adopted for any city with a population of over 100,000 inhabitants, and another series of special and more detailed provisions for St. Louis, authorizing the consolidation of city and county government and the framing and adoption of home rule charters by such cities.

Under the special provisions for St. Louis, a board of freeholders might be elected by the city and county: "To propose a scheme for the enlargement and definition of the boundaries of the city, the reorganization of the government of the county, the adjustment of the relations between the city thus enlarged and the residue of St. Louis County, and the government of the city thus enlarged, by a charter in harmony with and subject to the constitution and laws of Missouri." The proposed scheme should then be submitted to the voters of the whole county, and the charter to the voters of the city as enlarged.

The constitution also contained some specific provisions affecting the adjustments between the city and county, and also required the charter to provide for a chief executive and two houses of legislature, and authorized a gradation of tax rates in the territory annexed to the city.

Under these provisions a board of freeholders was elected on April 4, 1876; and a scheme of separation and a new charter were submitted to the voters on August 22, 1876. In the face of a good deal of opposition, both the scheme and the charter were declared adopted,—the former by a vote of 12,181 to 10,928; the latter by a vote of 11,309 to 8,088.

The charter of 1876 eliminated a number of duplicate authorities—notably the county court of seven members, which had exercised the functions of a county board. But the governmental machinery remained highly complicated, with an elaborate series of checks and balances. The municipal assembly was composed of two houses (as required by the state constitution), a council elected at large and a house of delegates elected by wards. There were fifteen elective administrative officers, for city and county purposes. The mayor had a large power of appointment in the middle of his four-year term. A board of public improvements made provision for correlation in connection with public works.

⁹ This situation may be contrasted with that of San Francisco in 1856, when criticism was directed at the city government, while the county government was considered economical and efficient.

Financial results under the new charter seem to have been highly satisfactory. Expenses and taxes were reduced. The abolition of the county court, some county offices and the county tax resulted in important savings. The issue of so-called "anticipation bonds" was reduced from \$1,550,000 in 1875-6 to \$350,000 in 1879-80. The board of public improvements worked well, reducing expenses while securing better improvements.

The new arrangements thus appear to have secured a large improvement in respect to city and county matters and more efficient administration. State legislation was also reduced to a considerable extent, but was not entirely eliminated. It was recognized from the outset that the city's charter powers did not authorize it to supersede the courts or the existing state-appointed police board. Subsequent state laws provided for a state excise commission (in 1893), a board of election commissioners (in 1895), and a locally elected board of education (in 1897). Judicial decisions have held that state laws regulating education, elections, police, public utilities and other matters of state concern supersede charter provisions on these subjects. It has also been held that each city with home rule charter powers constitutes a distinct class, for which the legislature may enact laws on such subjects of state concern.

From time to time attempts were made to amend the charter of 1876. But most of these failed, many because of the requirement of three-fifths of the total vote at the election. Five amendments, submitted at special elections were adopted. As time progressed, the demand for charter changes grew stronger. Corruption appeared in the city government, and officials were convicted of bribery. Amendments aimed at preventing further instances of this kind, and to secure a simpler and more efficient government were urged.

To meet difficulties caused by some of the details in the original constitutional provisions, a constitutional amendment was proposed by the legislature in 1901 and ratified by the voters in 1902. This omitted the limitation upon the proposal of charter amendments to "intervals of not less than two years"; provided that charter amendments could be adopted by three-fifths of those voting on the question; expressly authorized a general revision of the charter; omitted the limit of 90 days on the time given the board of freeholders; and substituted for the requirement of two houses of legislation, "at least one house of legislation to be elected by general ticket."

After several years of further delay, a new board of freeholders to revise the charter was elected in 1909. But the revised charter was rejected by a vote of 65,324 to 24,817 (January 31, 1911). In 1913 another board of freeholders was chosen, and its work was ratified, June 30, 1914, by a vote of 46,839 to 44,158.

The revised charter provides a much simpler organization, with a single board of aldermen, a mayor with large powers of control, a shorter ballot, a limited number of departments, and the initiative, referendum and recall. The only elective city officers are the mayor, comptroller and aldermen, (28 elected at large, but one alderman must be a resident of each ward.) The mayor appoints the efficiency board

and the directors of five departments, who together form a board of public service. The mayor, comptroller and president of the board of aldermen form a board of estimate and apportionment.

There are, however, also a number of elective officials provided by state laws; judges of the circuit, criminal, police and probate courts, circuit attorney, prosecuting attorney, sheriff, coroner, recorder of deeds, public administrator, license collector, and justices of the peace; also the police and excise commissioners and the election board, appointed by the governor; and the locally elected board of education.

Some problems have developed with the expansion of urban population beyond the limits established in 1876; and there is no provision for the further extension of the city. The state law provides that no city or town shall be incorporated within two miles of the limit of any other city or town in the same county. But as the city of St. Louis is not in St. Louis county, this does not prevent the incorporation of suburban municipalities immediately adjacent, and a complicated group of neighboring municipalities are developing. Questions of water supply, sewage disposal and the preservation of public order in these adjacent sections outside of the city are becoming important. Gambling and other disorderly and illegal enterprises have been carried on just across the line, and cannot be suppressed by the city. The supreme court has held that even the police of the city which are under the direct authority of the governor, cannot make arrests in St. Louis county.

Such problems, however, and the difficulties arising from state laws, which limit the scope of local control over the machinery of local government, do not destroy the advantages which have resulted from even the partial consolidation of city and county functions made possible by the separation of the city of St. Louis from St. Louis county.¹⁰

San Francisco City and County. San Francisco County was formed by an act of the first legislature of the state of California, passed February 18, 1850. The city of San Francisco was created by an act of April 15, in the same year, with a distinct list of officers independent of the county. Additional legislation, both for the county and for the city was passed during the next few years. The city government soon became notorious for its corruption, inefficiency and extravagance; while the county government was considered economical and efficient. A popular reform movement led to the formation of the famous Vigilance Committee, which was followed by a demand for the elimination of the dual machinery of government; and this resulted in the passage, on April 19, 1856, of an act "To repeal the several char-

¹⁰ Truman Post Young: *The Scheme of Separation of City and County Government in St. Louis—its History and Purposes*. In *Proceedings of the American Political Science Association* VIII, 97 (1911).

Samuel B. McPheeters: *Saint Louis*. In *Cyclopedia of American Government*, III, 245 (1914).

Isidor Loeb: *Municipal Home Rule in Missouri*. In *Proceedings of the Illinois Municipal League*, IV, 43 (1917).

Roger N. Baldwin: *St. Louis Successful Fight for a Modern Charter*. In *National Municipal Review*, III, 720 (1914).

St. Louis: A Preliminary Survey of Certain Departments (1910).

ters of the city of San Francisco, to establish the boundaries of the City and County of San Francisco, and to consolidate the government thereof".

By the Consolidation Act, duplication of offices was largely reduced. A board of supervisors, elected by wards, with a president, took the place of the county board and the mayor and bicameral council. One treasurer, one assessor and one attorney replaced former city and county officers. The constitution, however, required the election of a county judge, county clerk, district attorney, sheriff and coroner; and other elective executive officers were provided,—a total of 17 at large and 72 by wards.

The new government, under new officials, proved "a marvel of economy". Expenses of the city and county were reduced from \$2,646,000 in 1855 to \$353,000 in 1857. Much of this saving was ascribed to the Consolidation Act. In the constitutional convention of 1879, it was said that consolidation reduced the number of offices and expenses.

Modified by numerous amendments and supplemental legislation, the Consolidation Act remained the basis of local government in San Francisco for more than forty years. A new legislative charter, passed in 1880, was held invalid, on the ground that it had not been submitted to the people. Under the home rule provisions of the state constitution of 1879, new charters prepared by local boards of freeholders were submitted in 1883, 1887 and 1895, each to be defeated in turn. At length, in 1898 another charter was submitted and approved, and went into effect January 1, 1900. This in turn has been amended from time to time, notably by the work of a new charter board in 1910.

Under the home rule charter, as under the Consolidation Act, the city and county are co-extensive in area, with a single system of government. The machinery has been simplified and centralized to some extent. The board of supervisors now has eighteen members, elected at large. The mayor, county clerk, auditor, district attorney, sheriff and coroner are elected at one biennial election; and the tax collector, recorder, city attorney, public administrator and treasurer, at the next; all for four-year terms. There are also four police judges elected for four-year terms, one-half at each biennial election. The principal city departments are in charge of boards appointed by the mayor.

Six of the eleven elective administrative officers are county officers who must be provided to comply with constitutional requirements. The legislature may also create additional county officers; but under the county home rule provisions now in the California constitution, the method and manner of selection and the compensation and term of these additional officers may be determined in the local charter.

The number of officials acting in a dual capacity as both city and county officers has been increased, thus affecting considerable economy. In addition to the board of supervisors, treasurer, assessor and city attorney (under the Consolidation Act of 1856) the auditor and tax collector act both in city and county business; and the district attorney, a county officer, also prosecutes for the violation of city ordinances.

An extended report on the government of the city and county of San Francisco, prepared for the San Francisco Real Estate Board in 1916, contained important recommendations for changes in the charter and machinery of local government. These included proposals to make the mayor definitely responsible for administrative leadership, to make the board of supervisors solely a legislative and reviewing body, to make the assessor and the tax collector appointive officers, to combine certain departments and reorganize others, and to place a number of departments under single commissioners in place of boards. These recommendations would reduce the number of elective officers and simplify the machinery of government.

Another problem is that of extending the territorial area of the city and county. This is now only about 40 square miles. Any addition to the city involves a change in county boundaries; and under the present provisions of the state constitution a change in county lines is practically impossible.¹¹

City and County of Denver. Denver had its origin in several mining settlements established during 1858 at Cherry Creek, then in the western part of Kansas. In November, 1859, a provisional territorial government was set up, which on December 5, passed an "Act to charter and consolidate the towns of Denver, Aurora and Highland". Two years later the first territorial legislature of Colorado was legally organized, under Act of Congress; and on November 7, 1861, this body granted a city charter to Denver, confirming the acts of the provisional government. The same legislature also created the County of Arapahoe, with an area of 4,860 square miles, of which Denver became the county seat.

The city charter was amended and revised from time to time as in the case of other American cities. At first the council was the dominant factor in the city government. Later the powers of the mayor were increased, notably in 1876. In 1885 a bicameral council was established. In 1889 a state-appointed board of public works was established; and in 1891 a state-appointed fire and police board. In 1893 several neighboring municipalities were annexed; and a new city charter reorganized the administrative machinery; but the state boards were continued, and the local government continued to lack unity or responsibility. State and local party politics and public service corporations were important factors in much of the legislation affecting the city.

¹¹ Percy V. Long: Consolidated City and County Government of San Francisco. In Proceedings of the American Political Science Association, VII, 109 (1911).

Conferences on Good City Government: 1894-5. Isaac J. Milliken: Municipal Condition of San Francisco; 1901 J. Richard Freud: Municipal Affairs in San Francisco; 1903 Frank J. Symmes: The Municipal Situation in San Francisco.

Thomas H. Reed: San Francisco. In Cyclopedia of American Government, III, 251 (1914).

Report on a Survey of the Government of the City and County of San Francisco (1916).

A movement for a constitutional amendment for home rule and consolidation of local governments developed. This was promoted by difficulties in making further annexations to the city, by constitutional obstacles to the union of the several school districts within the city, and by the desire to separate the urban section from the greater part of Arapahoe county which extended eastward 160 miles to the Kansas line. A proposed amendment was passed by the legislature in 1901, authorizing municipal home rule charters for all cities of over 2,000 population, and with special provisions for the consolidation of city and county government in Denver; and this amendment was ratified at the election of 1902 as Article XX of the state constitution.

The new Article contained eight sections, six of which dealt with the city and county of Denver. Section 1 provides that:

"The municipal corporation known as the city of Denver, and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the State of Colorado, included within the territorial boundaries of the said city of Denver, as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the 'City and County of Denver.'" This included within the city and county six former towns, and a total area of 591½ square miles. This section also provided for further annexations of contiguous territory; and in addition to vesting the municipality with all property of the city of Denver and the included municipalities, gave power to construct, acquire, maintain and operate water works, light, power and heating plant, transportation systems and any other public utilities.

Section 3 provided for the transfer of government, and specifically provided for merging the existing city and county officers. Sections 4 and 5 set forth the procedure for framing and adopting a charter, and for new charters, amendments and measures. Section 7 provided for consolidating and merging the various school districts.

Section 6 authorized all cities of the first and second class to frame, adopt and amend their charters; and section 8 declared that any provisions in the state constitution inconsistent with this amendment to be inapplicable to matters covered by the amendment.

Under the provisions of the amendment a charter convention was elected on June 2, 1903. Its work was completed on August 1, and the charter was submitted to popular vote on September 22. Opposition by the party organizations and public utility corporations led to its defeat.

On December 2, a second charter convention was elected. This body eliminated from the defeated charter provisions which cut off political patronage and those which restricted the public utility companies, continued the bicameral council, and amended the initiative and referendum provisions. But the structural machinery for a centralized mayoralty government was retained. The revamped charter was voted for on March 29, 1904, and was adopted. The first election was held on May 17, and the new government began on June 1.

Meanwhile legal controversies were begun which continued for nearly ten years, and delayed the enforcement of some consolidation

features. In the first case, the validity of the constitutional amendment as a whole was attacked; but the amendment was upheld both by the Supreme Court of the State and the United States Circuit Court.¹² In a second case, it was decided that the state-appointed boards became part of the new municipality, and their members were no longer subject to appointment and removal by the governor.¹³

But in 1905 a reorganized Supreme Court, enlarged from three to seven members, held that the amendment must be considered as limited to local affairs, and that not even by constitutional amendment could the people of the state delegate to local authorities the power to regulate county offices, which were considered to be essential state offices.¹⁴ This decision did away for a time with the merger of city and county offices, which was plainly and specifically set forth in the constitutional amendment; and a dual set of city and county officers was restored.

Other decisions about this time and during several years tended to limit the powers of the municipality by broad construction and interpretation of state statutes, which it was held could not be limited by the powers conferred by Article XX.

In 1911, however, with a new personnel in the Supreme Court, the decision in the Johnson case was overruled. Returning to the opinion in the earliest case upholding Article XX, and following the dissenting opinion in the Johnson case, it was held that this amendment being part of the state constitution must be enforced by the courts, and that the consolidation of city and county offices provided for did not do away with county government and was authorized by the fundamental law of the state.¹⁵

This decision brought into force again the provisions of the charter for the consolidation and merger of city and county offices; and has put to rest the legalistic objections to the validity of consolidation authorized by the state constitution.

A further amendment to the state constitution adopted in 1912 added to the specified powers of cities under the home rule provisions.

Further changes have been made in the structure of city government. A charter convention in 1913 provided for the commission form of government. But after three years, the charter was again amended in 1916, restoring the city council and vesting the mayor with greatly extended powers, so that he has been called an "elected manager."

The consolidation of city and county government in Denver has led more thoroughly than elsewhere to a short ballot; and partisan influence in elections has been reduced by abandoning the party column ballot. Of seventeen elective county positions, only two remain. The number of local elections has been reduced to a single municipal election. The elective officers are the mayor, president and members of the council, county judge, and school commissioners. Under the amendment of 1916, the mayor appoints the heads of all administrative departments, and all commissions, boards and offices under his control. The appointive officers include the managers of the several depart-

¹² *People v. Louis*, 31 Colo. 369; *Watts v. Elder*, U. S. Circuit Court.

¹³ *People v. Adams*, 31 Colo. 476.

¹⁴ *People v. Johnson*, 34 Colo. 143.

¹⁵ *People v. Cassidy*, 50 Colo. 503.

ments, city clerk, city attorney, city engineer, municipal judges and superintendent of schools.

The work of the county commissioners has been taken over by the council and various city departments. The sheriff's office has been merged with the police department. The functions of the county treasurer and county assessor have been taken over by the revenue department. The city clerk acts as county clerk and recorder; the city attorney as county attorney; and the city engineer as county surveyor. Two municipal judges have taken over the work of three justices of the peace. One superintendent of schools serves the whole city.

The merging of city and county offices has eliminated overlapping jurisdiction to a large extent, though not entirely. Some duplications have been retained. The union of the sheriff's office with the police department has eliminated conflicts, which were notable, especially when the two were controlled by different political parties.

A comparative statement of county expenses for 1911 (when the dual set of officers was in existence) and 1917 shows a reduction from \$679,100 to \$476,600¹⁶

City and County of Honolulu. Local government has developed slowly in the Hawaiian Islands. But consolidation of city and county government has been established in Honolulu.

After an unsuccessful attempt in 1903, an act of the Hawaiian legislature in 1905 created five counties,—each of the four principal islands forming a separate county. Two years later, the county of Oahu (the largest island) was reincorporated as the City and County of Honolulu. The elective officers are a mayor, 7 supervisors (elected at large), sheriff, clerk, auditor, attorney and treasurer. There is also a circuit and a district court. Subordinate officers and departments include the fire, parks, engineer, electric light, garbage and roads departments, the public schools, city and county physician and insanity commission.

A charter convention was provided for in 1915, but the new charter passed by the legislature was vetoed by the governor. Local elections have been separated from the territorial elections, beginning in June, 1917.¹⁷

Other consolidation provisions and plans. In Virginia, counties have no jurisdiction over cities; and all cities in that state combine to some extent city and county functions. From the first state constitution of 1776, separate representation in the state legislature has been given to cities and boroughs as well as to counties. The constitution of 1850 provided for the election of a circuit court clerk and attorney of

¹⁶ King, C. L. *History of the City and County of Denver* (1911); Guthrie, W. B. *The City and County of Denver* (1917).

¹⁷ Reports of the Governor of Hawaii.

the commonwealth in each corporation and county in which a circuit court should be held; and also authorized the creation of corporation courts.

The constitution of 1869 contained a series of provisions for the government of cities and towns. These provided for a city judge in each city or town of over 5,000 population, and for the election in each city or town of the following officers:

A clerk of the corporation court, who shall also be clerk of the circuit court, except in cities or towns of 30,000 or more, in which a separate circuit court clerk may be elected;

A commonwealth's attorney;

A city sergeant;

A city or town treasurer, whose duties shall be similar to those of county treasurer;

A commissioner of revenue, and a mayor.

The present constitution of Virginia (1902) contains similar provisions for the election in cities of court clerks, commonwealth attorneys, sergeants, etc., exercising functions usually assigned to county officers.

The Michigan constitution of 1850 authorized the legislature to organize any city of 20,000 inhabitants into a separate county, when approved by the voters of the county in which the city is situated. In the constitution of 1908, this provision was amended to read as follows: "When any city has attained a population of one hundred thousand inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and of the remainder of the county in which such city may be situated voting on the question shall each determine in favor of organizing the city into a separate county".

The Minnesota constitution has the same provision as the Michigan constitution of 1850, as follows: "The legislature may organize any city into a separate county, when it has attained a population of 20,000 inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization."

The Missouri constitution of 1875, in addition to the provisions for the separation of St. Louis city and county, provides that: "In all counties having a city therein containing over one hundred thousand inhabitants, the city and county government thereof may be consolidated in such manner as may be provided by law."

The California constitution contains the following provisions for city and county consolidation:

"The legislature may provide by general laws for the performance by county officers of certain municipal functions of incorporated cities when a majority of the electors of such city voting at a general or special election so determine.

"Cities framing their own charters may by provision therein or amendment provide for the performance by county officers of certain municipal functions when the discharge of such functions is authorized by general law or by a county charter framed under the constitution.

"City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government."¹⁸

Plans for consolidated city and county government have been actively discussed in Los Angeles and in Alameda county. In Los Angeles, it has been proposed to organize the southern part of Los Angeles county, including the city of Los Angeles and a number of other municipalities into a city-county. An extended report issued by the 'Tax Payers' Association of California in 1917 presents the advantages in reducing elections, a unified school system, the reorganization of courts, gains in efficiency, and financial savings, estimated at a minimum of \$2,688,000. A report of the Los Angeles Realty Board, however, opposed the division of Los Angeles County.¹⁹

In Alameda county, proposals for a federated city and county government have been prepared and discussed. These include plans for a series of boroughs within the county (for the existing cities of Berkeley, Oakland, Alameda and other places), each retaining its identity, controlling local taxes, and with powers of police and health regulation, public works, police and fire departments. The proposed central government included a board of supervisors, with a manager and twelve departments (dealing with taxation and finance, schools, purchases, police, attorney, municipal court, library, city planning and civil service), taking the place of 125 existing agencies.

A detailed amendment to the California constitution, adopted in 1918, contains a series of alternative provisions apparently intended to apply to the Alameda county situation. Such detailed constitutional provisions, however, seem likely to cause trouble in the future when changes may be needed.²⁰

Within the last few years the question of city and county consolidation has been advocated in Ohio. The matter was brought before the General Assembly in 1917, and after some investigation of local conditions in the more populous counties, a resolution for a constitutional amendment was introduced to permit counties with a city of over 100,000 to reorganize and consolidate the local governments within the county or any part of it. This resolution passed in the Senate, but did not receive the necessary three-fifths vote in the House.

At the legislative session of 1919, the question was again presented, and was especially urged by the Civic League of Cleveland in connection with the situation in that city and Cuyahoga County. A proposed county home rule amendment was presented, authorizing any county to frame and adopt a charter for its government, and with the following

¹⁸ Constitution, Article XI, Secs. 6, 7.

¹⁹ City and County Consolidation for Los Angeles. Report of the Los Angeles Realty Board on the subject of city and county consolidation (1917).

²⁰ Centralized government for Alameda County and its cities (August, 1916). Summary of a Charter for a Federated City and County Government for Alameda County (Sept. 1916).

provisions as to consolidation: "Any county with a population of over 200,000 may provide by charter for the abolition of any or all existing governments within said county. It may provide by charter, in place thereof, a unified government over the entire county, which charter shall provide for the establishment of such local districts or boroughs for administrative and self-governing purposes, or for assessment and taxation purposes or for both, as it may deem convenient and equitable. Any single government thus established shall have the powers and privileges granted to municipalities and counties under the Constitution".

The question of city and county consolidation is also being seriously considered in Buffalo, Rochester, Indianapolis, Pittsburgh, Kansas City, Portland, Ore., and Seattle; and proposals for further consolidation are being discussed in New York city and Philadelphia. A resolution was presented in the Oregon legislature in 1919 for a constitutional amendment to consolidate the city of Portland, the county of Multnomah, and the other municipal corporations and local districts in the county, into a single body politic and corporate by the name of the "City and County of Portland".²¹

County Boroughs in England. Local government changes in England during most of the nineteenth century tended to develop a confusing complexity of overlapping districts and authorities. But during the last thirty years, important steps have been taken in the direction of unifying and simplifying the local agencies; and this has been most notable in the case of the larger cities (outside of London) which have been organized as county boroughs.

The borough in England is the municipal corporation corresponding most closely to the city in the United States. But in addition to the usual functions of American cities, the English borough has also (since 1902) local control of education. Many boroughs also have separate courts (justices of the peace, recorders and quarter sessions), though all judicial officers are appointed by the central government. The ordinary municipal borough is, however, subject in some respects to the jurisdiction of the county council, and also to that of the central local government board (changed in 1919 to the ministry of health).

There are 19 ancient cities or boroughs which, in addition to separate courts, have for centuries had their own sheriffs, and have thus been more largely independent of the surrounding counties.

County boroughs were created by the local government act of 1888, which established elected county councils. Most of the ancient city-counties, and also most boroughs of over 50,000 population have been classed as county boroughs,—which now number more than 70. These county boroughs are almost entirely exempt from the jurisdiction of the county councils; and the borough government has most of the powers of the county council as well as those of the ordinary municipal borough. It receives its share of central government grants

²¹ Senate Joint Resolution No. 18, introduced Feb. 3, 1919.

directly, instead of through the county council; it is the local education authority for both elementary and high education; and controls charitable and other institutions usually managed by county authorities.

Most of the county boroughs do not have their own sheriffs. In county boroughs where no assizes (*nisi prius* sessions of the supreme court judges on circuit) are held, they must contribute to the cost of the county assizes. In some cases county boroughs unite with the neighboring county in maintaining insane hospitals and other institutions which are managed by joint committees. Joint boards from several local authorities are also established for other purposes,—such as the Mersey dock and harbor authority, composed of representatives from Liverpool and a number of other local bodies. When county boroughs are formed, financial adjustments must be made with the county, and these may be revised every five years.

Special arrangements have been made for London, whose local government is still complicated and in need of further consolidation. The main metropolitan area (including parts of three counties) has been organized as an administrative county, with an elected county council. The London county council has the powers of other county councils, and also jurisdiction over a number of important matters usually given to boroughs. These include education, main drainage, fire brigade, parks, bridges, main thoroughfares, regulation of buildings, and some licensing powers.

There are several other authorities having jurisdiction over the metropolitan area as a whole. The police are under a commissioner appointed by the central government. Water supply is in charge of a metropolitan water board, composed of representatives from the local authorities. The police district and the water district differ considerably in area from each other and from the administrative county. There is also a metropolitan asylums board and a port authority.

In addition to these, there are a good number of other local authorities over smaller districts. The ancient city of London still retains a special position in the heart of the county. There are 29 metropolitan boroughs, each dealing with local matters, such as street paving, lighting, sanitation, minor housing projects, baths and wash-houses, libraries and museums. In many matters the metropolitan boroughs are subject to control by the county council. Outside of the administrative county of London are a number of important urban districts within the metropolitan area. Finally there are 30 poor law unions within the administrative county.²²

German City-Circles. (Kreis-Stadte). In Germany, the local government of most cities of over 25,000 population, and some below that figure, is combined with that of the "circle", the district corresponding in some respects to the American county. In 1910 there were 99 such city-circles in Prussia, detached from the surrounding circles,

²² *Encyclopedia of Local Government Law*, I, 565-568; Harris: *Problems of Local Government*, 217-219; Odgers and Maldred: *Local Government*, 96-97; Redlich: *Local Government in England*, II, 97-99, 106-108.

and in Bavaria 43 "unmittlebar" cities had a somewhat similar arrangement.

The most important effect of this arrangement is to free these cities from the supervision of the circle authorities. Each of these cities has a committee of its own, which exercises the supervisory functions vested in a circle committee for smaller places. These city-circles are however subject to the supervision of officials of the larger district—the *Bezirk*.

Cities within circles pay a large share of the circle taxation, for which they receive little direct return; while the circle governments have been controlled by the rural districts. When a city is separately organized as a circle, financial adjustments are made.

Berlin occupies a special status. It is excluded both from circle and district (*Bezirk*) control, and for administrative purposes is detached from the Province of Brandenburg. There is however a police commissioner appointed for Berlin, and also a district committee; and the chief president of the Province of Brandenburg has oversight over the Berlin government.²³

In the "free cities" of Hamburg, Bremen and Lubeck, city and state government are combined in one system.

Swiss City Cantons. Several of the Swiss Cantons are predominantly urban in character. Zurich, with an area of 666 square miles, had a population in 1913 of 534,250. Geneva had a population of 160,960 in an area of 108 square miles. The canton of Basel City had a population of 142,870 in an area of 14 square miles.

In these cases the cantonal governments are controlled by the cities; and in the canton of Basel City, municipal affairs are managed by the cantonal government, and there is no separate municipal organization for the urban area. Zurich and Geneva are divided into communes; and there are separate municipal governments for the urban area and for the rural communes, distinct from the government of the canton.

Paris and the Department of the Seine. The municipal government of Paris and that of the department of the Seine are partially combined and linked together. The members of the Paris municipal council are also members of the council general of the department, which includes also members from the districts outside of the city. The prefect of the department of the Seine is the chief administrative officer both for the department and for the city, except for matters under the control of the special prefect of police.

²³ Dawson, W. H.: *Municipal Life and Government in Germany*, 465-467.

For administrative purposes, Paris is divided into 20 arrondissements. These are the districts for the election of members of the municipal council; and in each there is a municipal building (*mairie*), where are located district offices for most branches of local administration, under the general supervision of a district mayor.²⁴

²⁴ A somewhat different system of 19 administrative districts exists in Vienna. See Albert Shaw: *Municipal Government in Continental Europe*; John A. Fairlie: *Essays in Municipal Administration*.

V. CONCLUSIONS.

This pamphlet has sought to give in detail the information that may be desired by the constitutional convention in dealing with the local problems of Chicago and Cook County. The data have been collected upon the assumption that they should throw some light upon the issues involved in the adoption of any one of the various alternatives for the solution of these local problems. The several alternatives have been stated and discussed, with the object merely of presenting the issues which may in one form or another present themselves in the deliberations of the convention.

It is assumed, however, that the constitutional convention, if it frames constitutional provisions upon this matter, will deal only with the general issues, without seeking to place the details of local organization in permanent constitutional form.

The constitution of 1870 prescribes in detail the present governmental organization and judicial system of Cook County; and detailed provisions framed for a county of 350,000 have naturally ceased to be fully applicable to the county after its population has increased eight-fold. The Chicago amendment to the constitution, adopted in 1904, was also detailed in character, and does not permit the solution of Chicago's governmental problems. If the important and changing problems of Chicago and Cook county are to be satisfactorily solved, the plan may well be resorted to of making it possible to meet these problems without serious constitutional restrictions.

The discussion in this pamphlet of the plans adopted in other large urban communities is of value as indicating what has been done elsewhere under somewhat similar conditions, but emphasis should be laid upon the fact that the experience of one community is not precisely applicable to the problems of another. Cook County and the City of Chicago present problems of a type different in many important respects from those presented by the city and county situation in other states, and the constitutional basis for the settlement of these problems must be determined primarily by the facts of the local situation.

In all discussions of proposals for consolidated government, it has been assumed that no community would be in any way forced to give up its autonomy and become a part of a larger consolidated city and county. The discussion in this pamphlet has been based upon this assumption and the several alternatives for local organization are discussed, not with the notion that any one of them will be placed in the constitution, but in order to present the several plans which might be worked out upon the basis of local consent, if the constitution were so changed as to make possible the local solution of the problems discussed.

The problems of Chicago and Cook County bear a close relation to those of local government elsewhere in Illinois. The multiplicity and complexity of overlapping areas within Cook County are here discussed, but in discussing the Cook County situation, it should be borne in mind that local government in many other parts of the state is almost as complex, if not equally so. St. Clair and Rock Island counties have already begun to present situations not dissimilar from those here detailed with respect to Cook County.

A separate pamphlet in this series will be devoted to the question of local government throughout the state.

The issue of municipal home rule will present itself to the convention not only with respect to Chicago but also with respect to the other cities of the state as well, and the issue as to limitations on municipal indebtedness will arise as to both. The question of municipal home rule for Chicago is more important perhaps, because Chicago is the state's largest city, and also because of the fact that Chicago has a very large proportion of the state's population.

The peculiar status of Chicago and Cook county raises other problems not involved in the grant of municipal home rule to other cities. In one respect, however, the problem is the same. No plan for municipal home rule for Chicago or for any other city is likely to place cities in a position independent of state authority as to matters of vital state concern.

However, Chicago and Cook county present a distinct question with respect to representation and this question is likely to be connected with that of granting larger powers to Chicago and Cook county to work out their peculiarly local problems. The problem of representation has a twofold aspect. The proposal to limit the representation of Cook county and Chicago will be made for the purpose of preventing Chicago and Cook county from dominating the rest of the state. But it is probably not desired by anyone that the rest of the state should control the local problems of Chicago and Cook county. If Cook county and Chicago have limited representation in either or both houses, but continue under the necessity of getting permission from the general assembly to deal with every new aspect of a purely local problem, they are helpless, for legislative inaction denies them the things they need. If Chicago is governed largely from Springfield, reducing the representation of Chicago at Springfield is reducing the power of the city to govern itself. A discussion of the problem of representation will be found in a pamphlet on the Legislative Department, and a separate pamphlet in this series is devoted to the subject of municipal home rule.

In a pamphlet devoted to the judicial department, an analysis of the present judicial system of Cook county and Chicago will be found. It may be worth while to suggest here, however, that the present judicial organization within Cook county confines its attention primarily to the questions presented by the city itself and somewhat neglects the civil and criminal matters arising in parts of the county outside of Chicago.

APPENDIX NO. 1. REFERENCES.

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APPENDIX NO. 2. TABLES.

TABLE 1.—*Assessed Valuations—1918—City of Chicago, Sanitary District, and Cook County.*

City of Chicago.....	\$1,082,763,780
Sanitary District of Chicago.....	1,145,619,326
Cook County outside Chicago.....	87,311,363
Cook County outside Sanitary District.....	24,455,017
Entire County.....	1,170,075,143

TABLE 2.—*Assessed Valuation—1918—City of Chicago.*

Calumet	\$ 8,594,900
Hyde Park	131,235,241
Jefferson	45,978,238
Lake	85,688,446
Lake View	82,077,254
Maine	231,368
Niles	27,395
North Chicago	69,752,304
Norwood Park	381,355
Rogers Park	10,746,091
South Chicago	413,731,634
Stickney	771,010
West Chicago	233,244,978
Worth	303,466

\$1,082,763,780

TABLE 3.—*Assessed Valuation—1918—Sanitary District of Chicago.*

Berwyn	\$ 2,352,628
Bremen	355,941
Calumet	9,868,884
Cicero	6,351,620
Evanston	14,011,221
Hyde Park	131,235,241
Jefferson	45,978,238
Lake	85,688,446
Lake View	82,077,254
Leyden	726,242
Lyons	1,620,828
Maine	298,579
New Trier	6,933,148
Niles	1,468,474
North Chicago	69,752,304
Northfield	565,305
Norwood Park	686,931
Oak Park	9,401,427
Proviso	5,051,725
Rogers Park	10,746,091
River Forest	1,137,754
Riverside	1,696,617
South Chicago	413,731,634
Stickney	2,930,592
Thornton	5,551,427
West Chicago	233,244,978
Worth	2,155,797
	\$1,145,619,326

TABLE 4.—*Assessed Valuations—1918—Cook County Outside the City of Chicago.*

Barrington	\$ 1,089,814
Berwyn	2,352,628
Bloom	3,999,645
Bremen	1,044,792
Cicero	6,351,620
Elk Grove	624,490
Evanston	14,011,221
Hanover	944,623
Lemont	761,955
Leyden	2,238,343
Lyons	5,348,341
New Trier	6,933,148
Northfield	890,377
Oak Park	9,401,427
Orland	561,990
Palatine	1,042,408
Palos	563,532
Proviso	6,261,021
Rich	1,055,151
River Forest	1,137,754
Riverside	1,696,617
Schaumburg	561,646
Thornton	7,384,751
Wheeling	1,058,521
Calumet *	1,273,984
Maine *	1,794,722
Niles *	1,441,079
Norwood Park *	416,493
Stickney *	2,159,582
Worth*	2,909,688
Total	\$87,311,363

* These townships are partly country and partly city townships. The valuations are on those parts outside the city limit.

TABLE 5.—*Assessed Valuation—1918—Cook County Outside the Sanitary District.*

Barrington	\$1,089,814
Bloom	3,999,645
Bremen	688,851
Elk Grove	624,490
Hanover	944,623
Lemont	761,955
Leyden	1,512,101
Lyons	3,727,513
Maine	1,727,511
Northfield	325,072
Norwood Park	110,917
Orland	561,990
Palatine	1,042,408
Palos	563,532
Proviso	1,209,296
Rich	1,055,151
Schaumburg	561,646
Thornton	1,833,424
Wheeling	1,058,521
Worth	1,057,357
	\$24,455,817

TABLE 6.—*Summary of Taxes Extended—1918—within Cook County.*

Purposes.	Within the Entire County.	Within the Limits of the Sanitary District.	Within the City of Chicago.	Outside the City of Chicago.
State	\$ 8,779,012.40	\$ 8,595,344.94	\$ 8,123,151.37	\$ 655,861.03
Cook County.....	7,023,289.24	6,876,415.95	6,498,499.68	524,789.56
Townships	589,516.70	563,011.84	201,748.71	387,767.99
Cities and Villages.....	22,684,655.97	22,541,516.44	21,441,393.10	1,243,262.87
School and High School Districts	21,132,709.17	20,331,141.32	17,652,031.62	3,480,677.55
Park Districts	6,041,444.34	6,027,473.42	5,913,476.19	127,968.15
Sanitary District.....	4,585,114.44	4,585,114.44	4,333,040.91	252,073.53
Forest Preserve District	705,828.54	690,871.59	652,210.75	53,617.79
Other	470,408.92	58,963.23	48.00	470,360.92
Total	\$72,011,979.72	\$70,269,853.17	\$64,815,600.33	\$7,196,379.39

TABLE 7.—*Relation Between Taxes Extended Within Cook County—1918—and Those Extended Within the Sanitary District and the City of Chicago.*

Purposes.	Percentage Extended Within Cook County.	Percentage Extended Within the Sanitary District.	Percentage Extended Within the City of Chicago.	Percentage Extended Outside the City of Chicago.
State	100	97.9	92.5	7.5
County	100	97.9	92.5	7.5
Townships	100	95.5	34.2	65.8
Cities and Villages.....	100	99.3	94.5	5.5
School and High School Dis- tricts	100	96.2	83.5	16.5
Park Districts	100	99.7	97.8	2.2
Sanitary Districts	100	100.	94.5	5.5
Forest Preserve District....	100	97.8	92.4	7.6
Other	100	12.5	.....	100.
Total	100	97.58	90.00	10.

TABLE 8.—*Taxes Extended*

Chicago—Towns.	State.	County.	City and Village.	Schools.
North Chicago.....	\$ 523,216.99	\$ 418,576.99	\$1,381,177.78	\$1,137,053.37
Lake View.....	615,764.93	492,607.19	1,625,324.00	1,338,077.70
Rogers Park.....	80,634.06	64,506.96	212,815.75	175,209.58
Jefferson.....	345,161.87	276,118.19	910,727.66	749,854.21
Hyde Park.....	984,671.67	787,728.23	2,598,883.37	2,139,622.88
Lake.....	643,090.79	514,458.05	1,697,113.07	1,397,272.79
South Chicago.....	3,103,184.99	2,482,553.53	8,192,097.35	6,744,069.75
West Chicago.....	1,749,866.36	1,399,916.71	4,618,850.15	3,802,555.29
Calumet.....	64,573.72	51,701.28	170,374.52	140,291.51
Maine.....	1,777.14	1,390.55	4,587.65	3,779.24
Niles.....	246.41	164.52	545.20	447.82
Norwood Park.....	2,785.88	2,302.91	7,567.51	6,235.64
Stickney.....	5,833.25	4,649.63	15,313.64	12,607.05
Worth.....	2,343.31	1,824.94	6,015.45	4,954.79
Totals—City of Chicago	\$8,123,151.37	\$6,498,499.68	\$21,441,393.10	\$17,652,031.62
Totals for Entire Townships Being Partly Outside Chicago.				
Calumet.....	\$74,203.72	\$59,360.98	\$188,287.56	\$189,249.67
Maine.....	15,237.14	12,196.83	33,553.09	100,474.77
Niles.....	11,026.41	8,818.06	7,503.19	20,276.01
Norwood Park.....	6,015.88	4,809.64	7,567.51	15,084.67
Stickney.....	22,033.25	17,618.28	18,046.24	49,249.96
Worth.....	24,166.77	19,348.52	34,733.48	102,855.39

^a Forest preserve district.

1918—Chicago by Towns.

Park Districts.	Sanitary District.	Town.	Others.	Total.
\$ 453,547.10	\$ 279,073.12	\$97,734.11	\$ 41,931.32 ^a	\$ 4,332,310.78
553,493.69	328,458.76	90,508.80	49,429.49 ^a	5,098,664.56
44,804.53	43,017.96	.....	6,489.41 ^a	627,478.25
197,580.89	184,170.03	.....	27,935.23 ^a	2,691,548.08
564,793.26	525,270.61	.....	79,150.45 ^a	7,680,120.47
368,986.53	343,096.03	.....	51,856.44 ^a	5,015,873.70
1,779,282.97	1,655,092.54	.....	248,450.18 ^a	24,204,731.31
1,913,197.57	93,430.25	.....	140,534.60 ^a	14,558,350.93
29,962.15	34,483.45	10,440.70	5,191.91	507,019.24
1,366.92	959.87	386.97	224.85	14,473.19
.....	125.23	78.16	66.82	1,674.16
.....	1,542.33	744.18	246.82	21,425.27
.....	3,100.52	1,478.87	529.95	43,512.91
1,460.58	1,220.21	376.92	221.28	18,417.48
\$5,913,476.19	\$4,333,040.91	\$201,748.71	\$652,258.75	\$64,815,600.33
 \$34,645.58	 \$39,629.17	 \$11,994.70	 \$13,978.02	 \$611,349.40
3,448.02	1,199.87	3,296.97	34,454.85	203,861.56
.....	5,880.23	3,243.16	25,316.82	82,063.88
.....	2,772.33	1,554.18	4,036.82	41,841.03
.....	11,757.52	5,622.87	15,099.95	139,428.07
6,091.30	8,670.21	3,933.08	19,571.28	219,370.03

TABLE 9.—*Taxes Extended 1918—*

	State.	County.	City and Village.	Schools.
Barrington.....	\$ 8,179.98	\$ 6,543.03	\$ 4,094.48	\$ 16,931.61
Berwyn.....	17,685.97	14,154.13	45,924.35	125,861.29
Bloom.....	30,063.90	24,066.41	57,951.91	156,061.09
Bremen.....	7,865.84	6,289.97	2,934.85	11,606.99
Cicero.....	47,700.41	38,158.98	See Town Tax	320,158.26
Elk Grove.....	4,688.09	3,750.87	925.32	9,736.96
Hanover.....	7,091.17	5,673.91	2,594.30	10,969.92
Lemont.....	5,722.69	4,578.53	5,066.10	23,287.11
Leyden.....	16,839.27	13,477.58	14,041.58	42,426.01
Lyons.....	40,178.68	32,162.08	60,266.99	197,091.80
New Trier.....	52,058.70	41,647.94	126,655.42	365,639.79
Northfield.....	6,685.94	5,350.20	3,283.23	22,032.40
Oak Park.....	70,594.36	56,467.96	232,391.77	484,263.02
Orland.....	4,218.27	3,378.73	1,065.08	10,778.14
Palatine.....	7,825.13	6,263.31	5,870.31	21,722.52
Palos.....	4,233.87	3,388.15	1,466.22	7,828.13
Proviso.....	47,064.66	37,673.36	102,897.02	289,135.94
Rich.....	7,919.28	6,335.68	1,821.94	8,740.97
River Forest.....	8,543.55	6,837.14	18,214.76	58,605.40
City of Evanston.....	105,145.58	84,120.57	344,736.93	599,051.38
Riverside.....	12,743.53	10,193.64	28,917.10	85,575.03
Schaumburg.....	4,214.99	3,372.45	.....	3,935.86
Thornton.....	55,522.67	44,421.93	91,783.47	271,205.84
Wheeling.....	7,951.04	6,364.53	5,072.64	29,157.67
Total-towns wholly outside Chicago.....	\$580,737.57	\$464,671.08	\$1,157,975.77	\$3,171,803.13
(Taxes Extended on Parts of City Towns outside Chicago).				
Calumet.....	\$ 9,630.00	\$ 7,659.70	\$17,913.04	\$48,958.16
Maine.....	13,460.00	10,806.28	28,965.44	96,695.53
Niles.....	10,780.00	8,653.54	6,957.99	19,828.19
Norwood Park.....	3,230.00	2,506.73	.....	8,849.03
Stickney.....	16,200.00	12,968.65	2,732.60	36,642.91
Worth.....	21,823.46	17,523.58	28,718.03	97,900.60
Total-Towns Partly outside Chicago.....	\$75,123.46	\$60,118.48	\$85,287.10	\$308,874.42
Total—Outside Chicago.	\$655,861.03	\$524,789.56	\$1,243,262.87	\$3,480,677.55
City of Chicago.....	\$8,123,151.37	\$6,498,499.68	\$21,441,393.10	\$17,652,031.62
Grand Total for County	\$8,779,012.40	\$7,023,289.24	\$22,684,655.97	\$21,132,709.17

Country Towns of Cook County.

Park District.	Sanitary District.	Town.	Other.	Total.
.....	.....	\$ 1,094.87	\$ 9,338.24	\$ 46,182.21
.....	\$ 9,449.75	.....	1,478.11	214,553.60
.....	.....	9,266.97	78,130.53	355,540.81
.....	1,429.85	2,111.91	19,948.17	52,187.58
\$ 2,195.68	25,450.70	297,314.07	3,868.70	734,856.80
.....	.....	1,253.12	12,835.31	33,189.67
.....	.....	670.04	6,627.43	33,626.77
.....	.....	8,389.56	5,400.88	52,444.87
.....	2,929.69	3,877.61	17,434.03	111,025.77
.....	6,499.90	5,947.01	36,211.47	378,357.93
53,638.09	27,781.02	.....	26,733.37	694,154.33
.....	2,267.92	2,416.26	16,975.21	59,011.16
41,441.11	37,674.81	.....	7,847.77	930,680.80
.....	.....	1,133.99	5,092.23	25,666.44
.....	.....	529.16	12,317.41	54,527.84
.....	.....	1,642.05	9,686.29	28,244.71
.....	20,343.87	13,286.13	43,333.42	553,734.40
.....	.....	1,589.17	18,154.84	44,561.88
7,408.20	4,561.71	.....	843.23	105,013.99
11,386.81	56,092.49	.....	8,807.92	1,209,341.68
.....	6,801.76	3,581.14	3,772.17	151,584.37
.....	.....	508.27	3,995.79	16,027.36
503.01	22,312.34	14,888.12	58,024.53	558,661.91
.....	.....	2,129.38	11,135.55	61,810.81
\$116,572.90	\$223,595.81	\$371,628.83	\$418,002.60	\$6,504,987.69
\$4,683.43	\$5,145.72	\$1,554.00	\$ 8,786.11	\$104,330.16
2,081.10	240.00	2,910.00	34,230.00	189,388.35
.....	5,755.00	3,165.00	25,250.00	80,389.72
.....	1,230.00	810.00	3,790.00	20,415.76
.....	8,657.00	4,144.00	14,570.00	95,915.16
4,630.72	7,450.00	3,556.16	19,350.00	200,952.55
\$11,395.25	\$28,477.72	\$16,139.16	\$105,976.11	\$691,391.70
\$127,968.15	\$252,073.53	\$387,767.99	\$523,978.71	\$7,196,379.39
\$5,913,476.19	\$4,333,040.91	\$201,748.71	\$652,258.75	\$64,815,600.33
\$6,041,444.34	\$4,585,114.44	\$589,516.70	\$1,176,237.46	\$72,011,979.72

TABLE 10.—*Tax Rates 1918.**City of Chicago and Certain Other Cities and Villages in Cook County.*

	State, County, Forest Preserve, Sanitary District.	Town and Road.	City or Village.	Park.	School.	High School.	School Bond.	Total.
Berwyn.....	\$1 81	.....	\$1 95	.....	\$3 00	\$1 95	\$0 30 or \$0 58	\$9 29
Blue Island...	1 81	\$0 73	1 90	\$0 55	2 80	2 80	.....	10 59
Chicago								
Heights.....	1 41	2 08	2 19	.....	3 00	1 28	25	10 21
Cicero.....	1 81	4 68	.....	33	3 00	1 95	30 or 58	12 35
Evanston.....	1 81	.....	2 46	\$0 26 or 55	\$2 18 or 2 35	2 05	.....	\$8 76 or 9 22
Harvey.....	1 81	90	2 10	.....	3 00	1 90	.....	9 71
Oak Park.....	1 81	.....	2 47	44	3 00	2 15	.....	9 87
River Forest..	1 81	.....	1 60	65	3 00	2 15	.....	9 21
Riverside.....	1 81	37	1 90	.....	2 10	3 00	.....	9 18
Wilmette.....	1 81	32	2 00	85	3 00	2 40	.....	10 38
Winnetka.....	1 81	32	1 65	75	3 00	2 40	.....	9 93
City of Chicago								
Towns								
N. Chicago	1 81	14	1 98	65	1 63	.....	.....	6 21
S. Chicago.	1 81	.....	1 98	43	1 63	.....	.....	5 85
W. Chicago	1 81	.....	1 98	82	1 63	.....	.....	6 24
Hyde Park	1 81	.....	1 98	43	1 63	.....	.....	5 85
Jefferson..	1 81	.....	1 98	28 - 57	1 63	.....	5 70 -	5 99
Lake.....	1 81	.....	1 98	43	1 63	.....	.....	5 85
Lake View	1 81	11	1 98	68	1 63	.....	.....	6 21
Brookfield.....	1 81	81	2 52	.....	3 00	3 00	.....	11 14
Desplaines.....	1 41	1 97	3 20	.....	3 00	2 70	.....	12 28
Park Ridge...	1 41	1 97	2 45	40	3 00	2 70	.....	11 93
Maywood.....	1 81	81	2 05	.....	3 00	1 90	.....	9 57

TABLE 11.—*Assessed Valuations and Taxes Extended—1918—Counties Adjacent to Cook County.*

	Du Page County.	Lake County.	Will County.
Assessed Valuation.....	\$17,263,612.00	\$25,504,516.00	\$35,123,745.00
Taxes Extended			
State	\$129,617.58	\$191,495.63	\$ 263,523.88
County	105,518.33	234,857.24	263,523.88
Town	25,391.79	19,918.85	85,272.06
Road and Bridge.....	125,745.90	136,804.06	290,302.47
City and Village	133,643.08	321,466.45	326,116.34
School	431,000.02	702,991.60	1,173,519.40
Park and Forest Preserve....	3,618.01	36,947.62	.....
Other	3,477.00	98,521.50	6,354.00
Total	\$958,011.71	\$1,743,002.95	\$2,408,612.03

TABLE 12.—*Bonded Indebtedness of Local Governments in Chicago**
As of December 31, 1919.

	Total Bonds Authorized.	Bonds Outstanding.	Bonds Authorized but Unissued.
Cook County	\$15,157,500	\$ 9,157,500	\$ 6,000,000
Forest Preserve District.....	6,760,000	6,474,000	286,000
Sanitary District	13,678,000	13,580,000	98,000
City of Chicago	81,910,700	45,695,500	36,215,200
South Park District.....	4,031,000	4,031,000	.....
West Chicago Park District.....	3,156,000	3,156,000	.....
Lincoln Park District.....	2,406,000	2,406,000	.....
Small Park Districts (a).....	1,200,000	1,200,000	.....
Total of all Local Govern- ments	\$128,299,200	\$85,700,000	\$42,599,200

* In 1915 the bonded indebtedness of the small park districts, according to a statement of the Chicago Bureau of Public Efficiency in "Unification of Local Governments" (1917), amounted to \$953,000. The records of the county clerks' office show that since 1915 bonds in the amount of \$359,000 have been issued by the various small park districts. Owing to the difficulty of obtaining exact information from the fourteen small park governments, the amount of bonds actually outstanding at the close of 1919 has been estimated, with the above named figures as a basis.

* Several of these governments extend outside the limits of Chicago, but they would all be involved in a consolidated government.

APPENDIX No. 3—CONSTITUTION OF ILLINOIS, ARTICLE IV, SECTION 34.

SECTION 34. The General Assembly shall have power, subject to the conditions and limitations hereinafter contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such manner as the General Assembly shall prescribe) in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefore shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special); and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution; and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters (voting on the question at any election, general municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the General Assembly shall create municipal courts in the city of Chicago it may abolish the offices of justices of the peace; police

magistrates and constables in and for the territory within said city, and may limit the jurisdiction of justices of the peace in the territory of said county of Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe; and the General Assembly may pass all laws which it may deem requisite to effectually provide a complete system of local municipal government in and for the city of Chicago.

No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect section four (4) of Article XI of the Constitution of this state.

APPENDIX NO. 4 — PROPOSAL OF THE CHICAGO CITY COUNCIL.

1. Subject to the provisions of the constitution, to laws now existing and to future general laws, the City of Chicago shall have powers of local government and of corporate action adequate for all municipal purposes. This grant of powers shall be liberally construed and no power shall be presumed to be denied by reason of not being specified in any existing or future law.

2. Laws of the state relating to the organization of the City of Chicago and to the mode of exercising its powers may be superseded in their application to the City by or under a charter framed by an elective convention called as provided by city ordinance and adopted by the voters of the city as provided by the convention, or by or under amendments of said charter adopted as provided by said charter. The question whether a convention shall be called or not shall be submitted to be voted on separately.

3. The following shall be deemed to be laws or ordinances relating to organization and to the mode of exercising powers:

First—Those which determine, create and organize the offices by which powers conferred or obligations imposed upon the city or upon any of its departments or agencies shall be exercised or performed, as well as the subdivision of the city for municipal purposes.

Second—Those which determine the methods by which such offices and all places in the municipal service shall be filled or vacated, and the compensation paid to officers and employes, which compensation, as well as the conditions of appointment and promotion of clerical or technical employes shall be determined according to a general plan.

Third—Those which determine the relations between offices and officers; but the relations between city officers and officers of the state, or of any of its subdivisions, and all provisions for supervision and control by the state or state officials of the exercise of the city's powers shall be determined by state law.

Fourth—Those which determine the procedure to be observed by city officials in exercising their powers, but so far as such procedure affects private rights, it shall be subject to state law.

Fifth—Those which determine which of the powers conferred upon the city shall be exercised by the people of the city directly, and the method of direct popular action.

4. Charter provisions and ordinances which in accordance with the foregoing provisions supersede state laws in their application to the city, shall be general in character and shall not be altered by state legislation.

5. The following shall not be deemed to be ordinances relating to the organization of the city or the mode of exercising its powers so as to supersede the application of state laws:

First—Those which determine the extent of the powers possessed, or to be exercised, by the city.

Second—Those which relate to the property rights and obligations of the city.

Third—Those which determine or impose penalties.

6. The administration of justice by the courts shall not be deemed to be a matter of local government, but the general assembly may delegate to the city, powers connected with the administration of justice.

7. The city shall have power to condemn private property (including public utilities and the privileges or licenses held in connection therewith) for public use in accordance with law. The power to condemn property lying outside of the city limits shall be determined by law.

8. The power of the city to own, acquire, construct, operate, or let or lease for operation public utilities shall not be denied by law.

The city shall have exclusive power, either by the exercise of its legislative authority or by contract, to regulate the rates to be charged and the services to be rendered by persons or corporations supplying transportation, communication, light, heat, power or other public utilities to the people of the city and enjoying special street privileges for that purpose.

Any contract made concerning rates or services shall for the term for which it is made, which shall not exceed ten years, be inviolable.

No law shall be passed by the General Assembly granting the right to construct and operate a public utility requiring the occupation of city streets by permanent fixtures, without requiring the consent of the city.

9. No state law shall be regarded as general which by reason of the conditions of its application is operative only in the City of Chicago.

10. No law shall be questioned by reason of not being general if the City Council by resolution shall accept the same.

11. The charter framed by an elective convention as above provided may provide for the consolidation with the city of the municipal corporations other than the County of Cook, now exercising taxing powers in any part of the City of Chicago, or any of them, but no taxing power shall be exercised under any such consolidation over that part of any such municipal corporation lying outside of the city unless such consolidation shall have been agreed to by the people inhabiting said part, voting as provided by law.

12. Limitations and requirements of the constitution relating to legislation concerning county organization, county officers or county affairs shall not bind legislation regulating relations between the County of Cook and the City of Chicago, or transferring functions performed by the County of Cook for the people of Chicago in whole or in part to the City of Chicago, or creating the City of Chicago into a separate county.

13. (1) The General Assembly may vest the corporate authorities of the City of Chicago with power to make local improvements by special assessments or by special taxation of contiguous property or otherwise.

(2) The General Assembly shall not limit the annual general tax on real or personal property by reference to the rate of taxation imposed by other authorities exercising powers of taxation over property in the City of Chicago, and any such limit now existing shall become inoperative.

(3) The City of Chicago may fix the limit of the annual tax rate on real or personal property in excess of the limit prescribed by law with the approval of the governor to be given or withheld only upon taking into consideration the recommendation of the state tax commission (or other authority performing the functions of the state tax commission) such recommendation to be made only after a public hearing and by a written opinion.

(4) The excess maximum rate of taxation thus fixed shall be effective for a period not longer than five years, as prescribed by ordinance, but subsequent increases may be authorized in like manner and for not exceeding a like period.

(5) The maximum rate so fixed may be inclusive or exclusive of taxes levied to meet indebtedness or interest thereon, as the ordinance may determine.

(6) The General Assembly shall not directly or indirectly impose upon the City of Chicago or the inhabitants or property thereof, any taxes for municipal purposes, nor create or provide for the creation of new municipal corporations, within the County of Cook, having taxing powers so as to include any territory of the city or enlarge or increase the taxing power of any such municipality except with the consent of the City Council.

(7) Where an act of the legislature of the state requires governmental functions to be carried out in the city which impose a new or additional financial burden upon the government of the city, the city may with the consent of the state tax commission, to be filed with the City Clerk, provide for the required expense by levying a tax in addition to the taxes then authorized by law.

14. (1) The City of Chicago may borrow money for corporate purposes and issue bonds or other evidences of indebtedness therefor.

(2) No bonds or other evidences of funded indebtedness shall be issued except in accordance with an ordinance authorizing the particular issue, which shall have been approved by the voters of the City in accordance with general provisions of law.

(3) No bonds or other evidences of funded indebtedness shall be issued except in accordance with a plan providing for the retirement of said bonds within a period not more than 50 years from the time of their issue, and provision shall be made in the ordinance for the levy of annual taxes and the application of the proceeds of such taxes to carry out such plan.

(4) The aggregate indebtedness of the City of Chicago, including existing indebtedness, shall not at any time exceed the limit fixed by

city ordinance which limit may be expressed therein as a stated amount or by reference to the taxable resources of the city.

(5) Such ordinance fixing the limit of aggregate indebtedness shall not be valid without the approval by written opinion of the State Tax Commission (or other authority exercising the functions of a state tax commission) and shall not take effect until the expiration of three months after such passage and approval and if, during such time a petition of two per cent of the legal voters for the submission of said ordinance to referendum shall have been filed with the City Clerk pursuant to law, not until said ordinance shall have been approved by the voters of said city.

(6) Such ordinance shall be unalterable for a period of 20 years from the time it shall take effect and thereafter shall be alterable only by like ordinance.

(7) Until a limit shall have been fixed as above provided, the City of Chicago shall not become indebted for any purpose to an amount including existing indebtedness, in the aggregate exceeding five per cent of the value of the taxable property therein to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(8) Loans incurred for the financing of income-producing property of the city and secured by the pledging of such property or its income, or franchises or privileges necessary for its enjoyment, shall, to the extent that they do not impose upon the city any general corporate liability, not be included in the limit of aggregate indebtedness fixed as aforesaid.

CONSTITUTIONAL CONVENTION

BULLETIN No. 12

County and Local Government in Illinois



Compiled and Published by the
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I. SUMMARY.

This bulletin presents a general survey of local government in the state of Illinois, and a brief comparison of conditions in other states, with special reference to suggestions for changes in the provisions of the state constitution relating to this subject.

Some parts of the general subject have been considered in more or less detail in other bulletins of this series. Bulletin No. 6 deals with the problem of municipal home rule for cities and villages. Bulletin No. 11 deals with the problems of Chicago and Cook County, and sets forth in detail the complexity of local areas in Cook County outside of Chicago, which is much of the same character as that in other parts of the state. Bulletin No. 4, on state and local finance includes a discussion of local taxation and local debt; and Bulletin No. 10 on the judicial department includes a discussion of county, municipal and other local courts.

These special topics, covered more thoroughly in other bulletins, are therefore only referred to briefly in this pamphlet; and the main attention in this bulletin is given to county and township government and the numerous series of overlapping special local districts.

The constitutions of Illinois have dealt with the subject of county government in increasing detail. A considerable number of county officers are provided for each county, and there are detailed provisions as to the compensation of these officers. There are also provisions for three types of county organization: (1) a board of county commissioners, the main features of which are prescribed in the constitution; (2) an optional township system, the details of which are regulated by the general assembly; and (3) a special organization definitely provided by the constitution for Cook County.

With the detailed constitutional provisions, both as to county areas and county government, there is little discretion left, either to the general assembly or to the local communities; and this situation has prevented the adaptation of county government to the needs of different types of counties in the state. Counties in Illinois vary from small agricultural counties of less than 10,000 population to Cook County, with a population 2,500,000; and the present constitutional provisions on county government do not adequately meet the varying needs of the widely different types of counties.

An optional system of township government is provided for in the constitution; but the township system is regulated mainly by statute. Township government, however, is now of little and declining importance.

Besides counties and townships, there are about a thousand cities and villages; and superimposed on these older local government units

are a numerous series of overlapping special districts. Such special districts have been created for many new functions of local government, and also for functions already within the powers of previously existing authorities; and the state is now overlaid with an intricate network of local districts and authorities, having little or no official relations to each other. Added to the local government districts are election and judicial areas, which further complicate the situation. No attempt has been made to organize a correlated system of local governing bodies to exercise the numerous functions of the existing overlapping authorities; nor has any effort been made to plan election and judicial districts so that they will correspond with each other or include the same groups of local government districts.

The only legislation which indicates an element of unity among the numerous local authorities is the Juul law, which attempts to provide a maximum for the aggregate of all local tax rates. But this law has been so frequently amended, so as to exempt one class of local authorities after another from the provisions for scaling down taxes when the aggregate local taxes exceed the maximum, that the law now affects only a small number of taxes.

Constitutional provisions as to uniformity of taxation and limitation of municipal debts have had a good deal to do with the multiplication of local districts. Where previously existing local authorities have incurred debt substantially to the constitutional limit, it has become customary to create new districts, with somewhat varying boundaries for the performance of certain functions. These new districts can incur an entirely new debt within the constitutional limitation. As a result, the present debt limitations have not restricted the amount of local debt which may be incurred for a given area; but have simply led to the creation of new districts for the purpose of incurring larger debts.

Some of the present difficulties in connection with local government in Illinois have resulted from the detailed character of constitutional provisions. Any series of detailed provisions will cause difficulties on account of changing conditions; and the problem for the constitutional convention of 1920 with respect to local government will be to examine the present constitutional provisions, with a view of modifying or eliminating those which have prevented needed legislation or have led to legislation adding to the complexity of local government, rather than to devise and place in the constitution a complete system of local government.

Many American states now have detailed provisions on local government in their constitutions, although few have as much detail as that of Illinois. Several states, however, have comparatively brief and general provisions; and a number of others (which have not had a general revision of their constitutions since 1860) have very few constitutional provisions on local government. Thirteen states now have constitutional provisions for municipal home rule. Two states (California and Maryland) provide for county home rule charters; and a proposed amendment for this purpose has also been presented in Ohio.

II. DEVELOPMENT OF LOCAL GOVERNMENT IN ILLINOIS.

Local government in Illinois has attracted more than local attention, on account of the geographical location of the state, as the meeting point of different systems, which resulted in the adoption of optional methods in different parts of the state. At the same time the development in this state has followed the same general tendencies as in other states towards detailed legislative control, with a greatly decentralized administration, a complicated series of overlapping local districts, and an unorganized group of local officials; and in recent years some tendencies toward state administrative supervision. A sketch of the main lines of this development will serve to explain some of the features of the present arrangements.

Under French and British rule. The local government of the early French settlements on the bottom lands of the Mississippi was comparatively simple and unimportant. The principal officials were appointed after 1732 by the French governor of Louisiana, but there were also some village officers for the local affairs of the several settlements. During the Seven Years War (1756-1763), the control of the superior officials was relaxed; and by the treaty of Paris (1763) the Illinois country was ceded to Great Britain.

During the period of British occupation, the Illinois settlements were under the supervision of the military commander of the district. Some steps were taken towards the introduction of English law. But on the outbreak of the American Revolution, the British troops were withdrawn; and the French settlements were captured by Captain George Rogers Clark in the name of Virginia in 1778.

The territorial period. In December, 1778, the Virginia assembly passed an act organizing the county of Illinois; and the Virginia county system was introduced. A county lieutenant was appointed, who selected the sheriff and militia officers, and established local courts with elected justices of the peace. But difficulties with the inhabitants soon arose; and after 1782 there was a period of confusion and disorder, as American settlers began to arrive.

The Illinois region was included in the Northwest Territory by the Ordinance of 1787; and under this Ordinance, Governor St. Clair

established the counties of St. Clair (in 1790) and Randolph (in 1795). The county organization established resembled that of Virginia, with sheriffs, justices of the peace, and other officers appointed by the governor. Provision was, however, also made for establishing civil townships, as in Pennsylvania, with officials appointed by the county court.

In 1800, the Illinois region was included in the newly created territory of Indiana. Some changes and additions to the machinery of local administration were made by the governor and judges of Indiana, and also by the territorial legislature established in 1805; and a revised code of territorial laws enacted in 1807 included a number of chapters relating to local government.

In 1809, the territory of Illinois was organized; and further changes were made in the details of local government, especially relating to the local courts. As settlements increased, thirteen new counties were formed from 1812 to 1818. Local records also show the existence of civil townships within the counties.

Under the constitution of 1818. The first state constitution of Illinois provided for the election in each county of a sheriff, a coroner, and three county commissioners; and authorized the General Assembly to provide for the appointment of justices of the peace, surveyors of highways, constables and other local officers. Judges of the higher courts were to be appointed by the General Assembly; and clerks of courts were to be appointed by the judges.

These decentralized provisions were in the direction of the Pennsylvania system of local government, which had been followed in Ohio and Indiana. The civil townships were also continued for a time; but a series of acts passed between 1823 and 1827 provided for several kinds of sub-districts within the counties for elections, roads and other local purposes, eliminating the civil township; and in this respect the local government became more similar to that of Kentucky and Virginia. At the same time, the congressional township became a local unit for school affairs; and this formed a basis for the later development of the township system of local government.

New counties were created at almost every session of the General Assembly; and by 1848 a total of 100 had been established.¹ Many counties in the southern part of the state were very small both in area and population. The Revised Statutes of 1845 established restrictions on the formation of new counties, the transfer of territory and the removal of county seats.

Other changes in local government during this period were also steadily in the direction of further decentralization. Justices of the peace were made elective in 1827. About 100 incorporated towns were organized by special charters, or after 1831, under a general law; and seven cities were established by special charters.

¹ One of them, Highland, was later reunited to Adams County; and only three additional counties have been organized since 1848—Kankakee in 1853, and Douglas and Ford in 1859.

The school laws of 1841 and 1845 provided for the local election of school trustees for each school township, and the formation of school districts within each township.

Constitution of 1848. In the constitutional convention of 1847-48, a number of important changes in local government were proposed. The various proposals were referred to several different committees, and the committee reports presented conflicting recommendations to the convention, while a number of minority reports increased the complications. The result was a compromise between conflicting ideas, and the adoption of a number of detailed provisions not based on consistent principles.

Some provisions were in the direction of a simpler and more concentrated machinery of local government. Restrictions on the formation of new counties, and on transfers of territory, taken from the Revised Statutes of 1845, served to put an end to the further creation of more counties. In the same direction was the union of the administrative functions of the county commissioners with the work of the probate justices in a new system of county courts.

On the other hand, while the coroner was omitted from the list of constitutional county officers, a number of additional elective constitutional officers were provided, including county judges, state's or county attorneys, clerks of circuit courts, and justices of the peace. Another provision, authorizing an optional system of township organization, opened the way to further decentralization of local administration to meet the wishes of the northern and central counties, which were being settled largely from eastern states with township government.

The township system was more definitely provided for by an optional law of 1849, which was revised in 1851 and 1861, and amended from time to time; and was also governed in some respects by the revenue laws of 1853 and 1855. County and township government, under these laws, resembled that in New York and Michigan, rather than that in Ohio and Indiana; and the town governments fell far short of the powers of the New England towns. Town meetings were provided, but they had few powers; and the principal functions were vested in town officers for the administration of local roads and for state functions such as the assessment and collection of taxes. In counties which adopted the township system, boards of supervisors elected by towns took over the administrative functions of the county courts.

The township system was rapidly adopted in many counties. At the election in November, 1849, it was accepted by 24 counties (17 north of the Illinois river and 7 in the central part of the state). By 1860, it had been established in 36 additional counties; and by 1870 in 10 more counties, a total of 70 of the 102 counties. Since 1870, it has been adopted by 16 other counties (14 by 1890 and 2 since then), one of which was definitely returned to the county system. Several

other counties, after adopting the township system, have voted to discontinue it, and have later readopted it.

Notwithstanding the rapid extension of the township system, the separate incorporation of towns (villages) and cities continued much more rapidly than before. In counties which adopted the township system, the number of very small incorporated towns was somewhat less than in counties not under the township system; but even where the township system was established, many incorporated towns were organized within the townships. By 1870 there were more than 400 incorporated municipalities in the state, including 43 cities.

Many of the incorporated towns organized during this period were established under the general law for the incorporation of towns; but many of these towns secured special acts with additional powers; and many towns and all of the cities were governed entirely by means of special legislation. Much special legislation was also passed for counties and other local districts; and the enormous mass of private and special laws relating to local government was one of the most striking features of the period under the constitution of 1848, especially after 1860.

In 1857, the private laws formed a volume of 1,550 pages. In 1869, they formed four volumes of 3,350 pages, of which 1,850 pages related to cities, towns and schools.

Proposed constitution of 1862. The proposed constitution of 1862 contained a number of additional provisions relating to local government, most of which were afterwards included, with others, in the constitution of 1870.

Local or special laws were prohibited on certain subjects, including laying out, opening, altering and working on roads or highways; vacating roads, town plats, streets, alleys and public squares; locating and changing county seats; regulating county and township business; and regulating the jurisdiction and duties of justices of the peace and constables.

The prohibition on the loan of public credit or aiding corporations or associations (placed on the state in 1848) was extended to any county, city, town, township or school district.

A uniform system of courts was provided, but with some special provisions as to the number of judges and court clerks in Cook county.

The coroner was restored to the list of elective county officers; and provision was made for the election of a recorder of deeds in counties with more than 35,000 population, and a probate judge and a probate clerk in counties with more than 100,000 population.

Provision was made for discontinuing township organization by a vote of the county.

Constitution of 1870. In the constitutional convention of 1869-70 many changes and additions were proposed in relation to local

government; and the new constitution contained a much greater amount of detail, imposing further restrictions on the General Assembly and also on the local governments.

The most important change was the prohibition of local or special legislation in a list of 23 enumerated subjects. A considerable number of the subjects in the enumerated list related to local government, as follows:

- Laying out, opening, altering and working roads or highways;
- Vacating roads, town plats, streets, alleys and public grounds;
- Locating or changing county seats;
- Regulating county and township affairs;
- Regulating the jurisdiction and duties of justices of the peace, police magistrates and constables;
- Incorporating cities, towns or villages, or changing or amending the charter of any town, city or village;
- Providing for the management of common schools;
- The opening and conducting of any election, or designating the place of voting;
- Chartering or licensing ferries or toll bridges;
- Creating, increasing or decreasing fees, percentages or allowances of public officers during the term for which said officers are elected or appointed;
- Granting to any corporation, association or individual, the right to lay down railroad tracks, or amending existing charters for such purpose.

At the same time, the constitution includes a series of special provisions relating to the courts, county commissioners, and other county officers in Cook County.

In the article on the Judicial Department, several changes were made in the provisions relating to county courts. The election of county judges by districts of two or more counties was authorized. The jurisdiction of county courts was enlarged; and the establishment of separate probate courts in counties of over 50,000 population was authorized. A state's attorney was to be elected in each county, in place of one for each judicial circuit. As already noted, special provisions were adopted relating to the courts of Cook County.

Further details were added to the regulations for the removal of county seats. Voters on this question are required to have resided in the county six months and in the precinct ninety days before the election. The question of removal may not be submitted oftener than once in ten years. And a three-fifths vote is required for the removal of a county seat farther from the center of the county.

For the management of county business in counties not under township organization, a board of county commissioners was again provided (as under the constitution of 1818), to take over the administrative functions of the county court, under the constitution of 1848. For Cook County, a special provision established a board of 15 county commissioners, 10 elected from the city of Chicago and 5 from the towns outside the city.

Additions were made to the list of constitutional county officers. Besides adding the state's attorney, the coroner was again named, and provision was made for electing probate judges and recorders of deeds in counties with over 50,000 and 60,000 population respectively. Several sections dealt in considerable detail with the fees and compensation of county officers and required semi-annual reports of fees, with special provisions for Cook County.

It was proposed to require township organization throughout the state; and this led to some discussion of the township system. The optional provisions were however retained, with additions relating to votes on adopting and on continuing or discontinuing the township system, providing that no two townships should have the same name and requiring the day of the annual town meeting to be uniform throughout the state.

In the article on Revenue, a limit of 75 cents on the \$100 assessed valuation was established for county taxes, unless an excess be approved by a vote of the people of the county. A more definite provision was adopted relating to taxes for corporate purposes; and authorizing cities, towns and villages to make local improvements by special assessment or by special taxation of contiguous property or otherwise.

As a result of the great increase in municipal debts during the preceding decade (largely for aid to railroads), a limit of five per cent was placed on such debts, with a further provision requiring the levy of an annual tax to pay interest on any debt and to discharge the principal within twenty years.

The general effect of these changes and additions was to stereotype the existing system of detailed legislative control, without administrative supervision, and to make changes in that system almost impossible. The only method left for meeting new problems and for avoiding in some measure the restrictions imposed was the creation of new classes of local districts and local authorities; and this has added further complications to the organization of local government throughout the state.

Legislation since 1870. At the session of the General Assembly in 1872, a series of revised laws relating to local government were passed, which were for the most part incorporated in the Revised Statutes of 1874. These included:

Several acts relating to fees and salaries of county and township officers.

An act relating to public libraries, approved March 7, 1872.

An act to provide for the removal of county seats, approved March 15, 1872.

An act in regard to roads and bridges, approved March 21, 1872.

An act for the assessment of property and for the levy and collection of taxes, approved April 1, 1872.

An act in regard to elections, and to provide for filling vacancies in elective offices, approved April 3, 1872.

An act to provide for the incorporation of cities and villages, approved April 10, 1872.

The Revised Statutes, however, included another revision of the road and bridge law, which repealed that of 1872.

As a result of these measures, the laws on these subjects were codified and made more coherent, and these general laws replaced many provisions in local and special acts. But there was also a marked tendency to elaborate still further the details of statutory regulations as to the organization and functions of local officers.

The Revised Statutes of 1874 have been amended and supplemented by much later legislation; and from time to time a revision of the laws on some subjects has been passed. Most of this has been in the form of general laws; and the prohibition on local and special legislation has been more effective than in many other states in restricting the volume of legislation and the proportion of laws enacted for particular communities.

Among the more important laws relating to local government, passed since the Revised Statutes of 1874, may be noted the following:

Acts revising the road and bridge laws, in 1877, 1879, 1883, 1887 and 1913.

Acts relating to drainage districts, in 1879 and 1885.

Acts relating to park districts, in 1893 and 1895.

An act to revise the law in relation to justices of the peace and constables, in 1895.

An act to regulate the civil service of cities, in 1895.

An act concerning local improvements, in 1897.

An act for the assessment of property, etc., in 1898.

Acts relating to primary elections in 1905, 1906, 1908, 1910 and 1919.

Acts relating to high school districts, in 1905, 1911 and 1917.

An act to revise the school law, in 1909.

Commission government law, in 1910.

An act relating to forest preserve districts, in 1913.

An act relating to public health districts, in 1917.

In these and other acts, however, the tendency toward greater detail has continued; and, notably in recent years, the volume of legislation has largely increased. In 1919, there were 202 acts relating to local government, aggregating 418 pages in the session laws. Comparatively few of these (only 8 acts, covering 39 pages) related specifically to county and township government. But there were 14 acts relating to cities and villages, 21 relating to schools, 15 relating to roads and bridges, 17 relating to drainage, 8 relating to elections, 87 making changes in the revenue laws, and 14 relating to courts, and 11 to fees and salaries.

The volume and detail of legislation on local government has been increased by the use of various devices for enacting laws general in form but of limited application. Counties, cities and other local districts have been classified usually on a basis of population, though

sometimes on other grounds; but without establishing a definite system of classification. The use of optional laws, effective only in communities which vote to adopt them, has been extended; and in a number of cases such laws have been passed with special reference to a particular community. New types of local districts have been created, such as park, drainage, sanitary, high school and public health districts, with overlapping jurisdiction covering the same territory as other types of local districts and adding to the complexities of local government.

Optional laws and the creation of overlapping districts have been upheld by the supreme court; and there is apparently no limit under the present constitution to the extent to which these methods may be employed. The classification of local districts has also been upheld in a number of cases; but in other cases some forms of classification have been held invalid, as being based on no reasonable relation to the purposes of the act.²

Some other tendencies in the legislation and in the general conditions of local government since 1870 may be briefly noted. The movement in the direction of decentralization has continued, as illustrated by the further extension of the township system, and by the introduction (in 1887) of elective road district commissioners in counties not under township organization. The latter change removed one of the important distinctions between the two forms of county government in Illinois. The creation of new types of local districts also illustrates the tendency towards decentralization.

At the same time, but more especially in the last twenty years, there have been distinct steps in the direction of more centralized local government. This has been indicated by changes in the laws increasing the powers and importance of county officers, as compared with the town officers, in such matters as the administration of poor relief, highways and the assessment and collection of taxes, and by the reduction in the number of town highway commissioners from three to one. The declining importance of the civil town has been aided by the close restrictions on its power of taxation and the failure to enlarge its authority; and is reflected in the gradual disappearance of the town meeting as an active agency, and the exercise of such town functions as remain by administrative officers acting under the minute regulations of statute law.

More notable has been the great development of municipal powers and functions in the incorporated cities and villages. This has been due primarily to the increase of urban population; but has been aided by the fact that the urban districts have been adjusted in area from time to time with changes in population so as to correspond more closely to the needs for public services than the fixed and artificial boundaries of the townships. Moreover the organization of urban government under the cities and villages act and still more under the commission plan has been placed on a more concentrated and systematic basis than that of other local authorities.

²Devine v. Commissioners of Cook County, 84 Ill. 590 (1877); People v. Knopf, 183 Ill. 410 (1900); Douglas v. People, 225 Ill. 536 (1907). See Bulletin No. 6, on Municipal Home Rule.

Still further, there has been a considerable development of state administration in fields formerly in the hands of local officials. State aid and supervision of local authorities have been established in the case of schools through the Superintendent of Public Instruction; for county jails and poor houses, through the State Board of Charities, replaced by the State Charities Commission, and in 1917, by the department of Public Welfare; in the work of road construction, by the State Highway Commission and the present department of Public Works and Buildings; and in the assessment of property for taxation by the State Tax Commission, established in 1919.

In other cases a more complete transfer of functions from local to state officials has been accomplished, as in the assessment of railroad property by the State Board of Equalization, and now by the State Tax Commission; the development of state charitable institutions whose management was more thoroughly centralized under the State Board of Administration in 1909 and combined with the state correctional institutions under the department of Public Welfare in 1917; and the control of public utilities by the Public Utilities Commission established in 1913.

The reorganization of state administration, by the civil administrative code of 1917, into an integrated and coherent system, does not directly affect the machinery of local government. But it serves as further indication of the tendency towards more systematic and efficient public administration. And at the same time, it offers a marked contrast, to the unorganized arrangements in most of the local districts and in the local governments as a whole.

III. PRESENT CONDITIONS IN ILLINOIS.

Introductory. Local government in Illinois is now regulated by a considerable number of constitutional provisions and a more numerous aggregation of laws scattered through the statutes. In addition to the laws on the more important local governments,—cities and villages, counties and township organization,—there are other important chapters in the Revised Statutes which must be considered, including those on courts, drainage, elections, parks, revenue, roads and bridges, and schools, and a considerable number of shorter chapters on still other subjects, such as various county officers, fees and salaries, and justices and constables. Altogether some thirty chapters in the Revised Statutes bear directly on different phases of this subject; while there are many further provisions in other chapters. All of the more important chapters of the Revised Statutes have been frequently amended, and also supplemented by numerous acts dealing with particular topics. A good number of acts apply only to certain classes within a general type of local districts; while other laws are optional, and have been adopted only by some districts; and in some cases such laws apply in fact only to a single district.

The result is a confusing mass of legislation, which, while less bulky than the special legislation before 1870, is nevertheless highly complex; and the task of extracting even the main features of the existing arrangements is one of no little difficulty.

There are three main types of local government districts: counties, townships and school districts. Every part of the state is at the same time in a county, a school township and a school district; and every part of the state is also in a civil township or a road district. In addition there are about a thousand cities, villages and incorporated towns; and also a considerable number of drainage, park, high school, and other special districts. All of these municipal districts overlap each other; and the result is a more complicated and confusing network of local areas and local authorities than in any other state. Still further, there are several classes of other districts—senatorial, judicial and congressional—, composed for the most part of groups of counties, for electoral and judicial purposes. Each of these classes in turn overlaps the other; and adds further to the complexity of the electoral and governmental organization.

Moreover, there is no official record of all of these local districts. Many districts are formed by local proceedings, recorded only in the county, or in some cases only in the records of minor local authorities.

Some confusion is caused by the different meanings for the terms town and township. The congressional township is a geographical area used in the land surveys, and as such has no political significance; but is in most cases (but not always) co-terminous with the school township. The civil town, under the township organization law, is more often different in area from the school and congressional township. Incorporated towns are villages organized under special charters before 1870.

County Government.

County Areas and County Seats. The state constitution contains a series of detailed restrictions as to the creation of new counties, changes of county boundaries and removal of county seats; and these are supplemented by statutory provisions on the same subject, and for the union of counties. In fact no new counties have been created since 1859, and no counties have been united.

There are 102 counties in the state, 29 with less than 400 square miles, the minimum area for new counties, and several with less than 200 square miles, while half a dozen counties are more than 1,000 square miles in area. In population, the counties range from 7,000 to more than 2,500,000; 50 counties had less than 25,000, and 17 had more than 50,000 population in 1910.

A good many difficulties in the operation of county government arise from these wide variations in area and population. The county officers required by the constitution are more than are needed in many of the small counties; and more efficient and economical administration could be secured by combining the functions of two or more officials, or by giving some officials jurisdiction over several of the smaller counties, or by uniting several small counties. In other populous states, most counties are both larger in area and have more population than many counties in Illinois.

The increase in population in Illinois since 1870 has been in the larger counties with urban population, while the small counties have decreased in population since 1900.

Referendum votes are required by the constitution and by statutes for a number of county matters: for the organization of new counties, for changes in boundaries or for the union of counties, for issuing bonds, for levying county taxes above the constitutional limit of 75 cents on the \$100, for adopting or discontinuing township organization, or for establishing a tuberculosis sanitarium. In counties under township organization such votes are required on the question of township support of paupers; and in counties not under township organization for the construction of public buildings, or the establishment of a county normal school.

County government is regulated to a considerable extent by constitutional provisions, and in further detail by statutory legislation. But it cannot be said that any definite principles of organization have been followed. There is an elective county board, and a considerable

list of elective administrative and judicial officers; but the distribution of powers does not follow at all closely the traditional American theory; nor is there even a nominal chief executive corresponding to the governor or mayor.

County Boards. Each county is a body politic and corporate; and its powers as such are exercised by a county board in one of three distinct types. In counties not under township organization (now 17 in number) the state constitution provides for "The Board of County Commissioners," consisting of three members elected at large, one each year. For Cook County, the constitution provides for a board of fifteen commissioners, ten elected from the city of Chicago and five from the towns outside of the city; and by statute these commissioners are now elected for a four-year term, and a member is elected as president of the board with special powers.

For the eighty-four counties under township organization, the county law provides for boards of supervisors, elected by towns at the town meetings in April for terms of two years. The number of supervisors varies with the number of towns in the county, and assistant supervisors are also elected from the larger towns (one for each 2,500 population over 4,000). The size of these county boards ranges from 5 in Putnam county, to 53 in LaSalle county. In eighteen counties there are 30 or more members.

The large boards of supervisors have been supported on the theory that they form the legislative branch of county government. But they have practically no legislative power; and for their administrative functions their size makes them unwieldy and ineffective. Most states have county boards of from three to seven members; and only five or six states have such large county boards as in Illinois.

Replies to inquiries sent to county officials by a committee of the General Assembly in 1912, showed a marked difference of opinion as between the two main types of county boards in Illinois. A majority of replies were in favor of the small boards of commissioners; and the proportion on this side was greater among the replies from the more populous counties with the larger boards of supervisors. This situation seems to indicate the desirability of an intermediate form of county board organization, between the small boards of three, and the larger boards of supervisors; and it would seem advisable for the constitution to permit such intermediate types in counties which wish them.

All three types of county boards have the same general powers, though each class has some additional powers, all of which are set forth in detail in the statutes. They have charge of county buildings and other property; they levy county taxes; they control county finances to some extent; they have limited powers as to roads, bridges, ferries, and county ditches and drains; they maintain poor farms, jails and workhouses, and may grant pensions to the blind and to dependent mothers; they have some powers in connection with elections, fill vacancies in county offices, prepare jury lists, and may grant certain bounties and rewards; they may make appropriations for county fairs and farmers' institutes; and organize townships or road districts.

The small boards of county commissioners formerly had larger powers in connection with highway matters. They also act as boards of health and boards of review of assessments, designate overseers of the poor and appoint a few minor local officials. But their functions are not in any large degree more important than those of the boards of supervisors.

These enumerated powers are limited in extent; and fall far short of giving the county boards complete control over county administration. The powers of the elective county officers are also conferred by statute, and some of the officers have also ancient common law powers. The county boards regulate the salaries of these officers, within certain limits; but have no effective control over them. Nor is any county officer vested with general authority over the others, as a chief executive.

The small boards of county commissioners and the boards of supervisors each elect a chairman. Regular meetings are prescribed by statute (five for the county commissioners, and two for the boards of supervisors); but special meetings are also authorized and are held frequently. Boards of supervisors usually hold four or five meetings a year; and county commissioners in some counties meet every month, and sometimes more frequently. In 1911-12, the Morgan county board of commissioners held 12 meetings, which aggregated 110 days in session.

Much of the work of the large boards of supervisors is done by means of committees. Such boards in the larger counties have from twelve to more than twenty committees. In Will county there are 26 committees for the year 1919-20.

County Officers. The state constitution provides for the election in each county of a county judge, state's attorney, sheriff, county clerk, clerk of the circuit court, treasurer, coroner and county superintendent of schools. Under the constitution and statutes, a county superintendent of schools is elected in all counties, a recorder of deeds in counties with over 60,000 population, and a probate judge in counties with over 70,000. By statute, provision is further made for the election of a county surveyor in all counties, a clerk of probate in counties over 70,000 population, and (by Act of 1911) a county auditor in counties with a population between 75,000 and 300,000.

All of these county officers are elected for four-year terms at the general November elections. County judges, probate judges, county clerks, sheriffs, treasurers and county superintendent of schools are elected in the middle of the governor's term; while state's attorneys, clerks of the circuit courts, recorders, coroners, surveyors and county auditors, are elected at the same time as the governor. No person elected as sheriff or treasurer is eligible for reelection for four years after the term for which he has been elected.

The election of this list of from nine to thirteen county officers (from four to seven at one election) adds a good deal to the

length of the ballot. If it is desired to shorten the county ballot, changes in the constitutional provisions will be necessary.

The county judge is both a judicial and an administrative officer. He has a limited jurisdiction in civil cases, and concurrent jurisdiction with the circuit courts in appeals from justices of the peace and police magistrates. He also has important powers in tax matters, in supervising elections and other administrative affairs. In most counties he further has jurisdiction in matters of probate; but in counties of over 70,000 population, this business is vested in a separate probate court, with a separate probate judge and probate clerk.

The state's attorney is primarily a public prosecutor in criminal cases, acting in this respect distinctly as an agent of the state government. He also acts as legal advisor to the county board and county officers. In view of his principal functions, it may be urged that this officer should be appointed by the governor or attorney-general, as the direct representative of the state government. It may also be said that there seems little need for a separate officer for each of the smaller counties; and that one person might act for two or more of such counties. Under section 30 of Article VI, state's attorneys can be removed only on prosecution and conviction for misdemeanor in office. It may become desirable to provide for some other method, as by the governor in the case of sheriffs.

The county clerk has the greatest variety of duties; and from his official relations to most branches of county government, he is tending to become the *de facto* chief administrative officer of the county. He is custodian of the county records, clerk (and in most counties also accountant) for the county board, and clerk of the county court. He has important duties under the primary and election laws, and in the assessment of property and the extension and collection of taxes. He issues hunters' and marriage licenses, and has in addition numerous other duties. By statute the county clerk might be given some of the legal powers of a chief executive.

The county treasurer is primarily custodian of county funds, but in counties under township organization is also county collector of taxes (for the state, county and other local districts). Since the abolition of township collectors by act of 1917 in counties of less than 100,000 inhabitants, all general property taxes are collected by this officer. He is also supervisor of assessments in counties under township organization, and assessor in counties not under township organization.

The clerk of the circuit court keeps records of the proceedings of the circuit court in the county, and in most counties he acts also as recorder of deeds. In counties of more than 60,000 population a separate recorder of deeds is elected. By act of 1897 for the registration of land titles, the recorder of deeds is also registrar of land titles in counties adopting the act.

The office of sheriff has lost much of its former importance, but it is still the one office always provided for every county in the country. He is chief conservator of the peace, but has no organized force for maintaining order; in emergencies he may appoint special deputies, organize a *posse comitatus*, or call on the governor for military aid. For the most part he acts as ministerial agent of the judicial courts, serving writs and orders, and has charge of prisoners and the county jail. In counties not under township organization, he is district and county collector of taxes. His responsibility to the state is now emphasized by an act of 1905, which provides that if a prisoner in the custody of a sheriff is lynched, the governor shall declare the office vacant.

The coroner is, next to the sheriff, the oldest county officer; but his principal function is to hold inquests in case of sudden death, which may be due to violence or other undue cause. These inquests are a curious survival of an antiquated procedure, which served a useful purpose in medieval times when there was no other provision for the investigation and prevention of crime. In some states this work is done by appointing medical examiners, and by leaving criminal investigations to the state's attorney.

The county superintendent of schools acts as agent of the state in distributing the state school funds; he inspects, supervises and advises local school officers; and holds teacher's examinations and teacher's institutes, under the supervision of the state superintendent of public instruction. He is a more effective intermediary between the state and local officials in the smaller districts than is provided in any other branch of administration. But the report of the Educational Commission of 1909 cited facts and opinions in favor of other methods of selection than popular election for a brief term of years. In eleven or more states officials corresponding to county superintendents of school are appointed, as are practically all city superintendents of schools.

In addition to the elective county officers provided by the state constitution, there are several appointive officers created by statute; and a number of other positions established by the county boards. The statutory county offices include county boards of review, county surveyors, county superintendents of highways, and (in counties over 75,000 population) county auditors.

The county surveyor makes official surveys on the order of a court or on the application of private parties.

County boards of review, (in counties under township organization other than Cook county) are composed of the chairman of the board of supervisors, and two citizens appointed annually by the county judge. In Cook county a board of review of three members is elected. In counties not under township organization, the board of county commissioners acts as a board of review. These boards review and equalize the assessments of property for taxation made by the local assessors.

County superintendents of highways are appointed by joint action of the county boards and the state highway authorities. The county boards submit lists of residents, from which the state highway authorities determine by competitive examination those best fitted; and from those found eligible the county boards make the appointments. The term of office is six years, subject to removal by the county board for incompetence, neglect of duty or malfeasance in office. These officers prepare plans and estimates for county bridges, supervise county roads, visit and inspect town and district highways and bridges, and act as deputies to the State Highway Engineer.

In counties with over 75,000 population and less than 300,000, county auditors are elected. In Cook County the county clerk is ex-officio county comptroller. In other counties, the county clerks act in some respects as accountants for county finances, subject to the county board.

In counties where coal is produced, county boards are required to appoint a county mine inspector, at the request of the district state mine inspector.

County boards may also appoint commissioners of Canada thistles, for election precincts or towns; and in counties not under township organization, the county boards are required to appoint annually three fence viewers in each precinct.

A public administrator is appointed for each county by the governor, for a term of four years. Masters in chancery and court reporters are appointed by the circuit courts; and probation officers by the circuit and county courts.

In most counties, under the rules of the county boards, provision is made for a superintendent of the county poor farm and a county physician; and in Cook county there are a number of other county positions.

The staff of county employees in the different counties varies to a large extent. In Cook county there are about 3,000 positions covered in the annual appropriation bill; and a considerable force of additional help employed in the several tax offices. A part of these are selected in accordance with civil service regulations under the county civil service commission; but in some of the county offices (such as the state's attorney and sheriff) most of the positions are exempted as confidential.

In the small counties there are but few county employees in addition to the elective officers; but in some of the larger counties, while the number in any one office is not many, the aggregate of county employees is a considerable force. But in none of the counties except Cook is there any definite system of classifying the employees or any civil service regulations governing their selection.

Township organization. The state constitution requires the general assembly to provide for an optional system of township

organization, and also to provide for submitting the question of discontinuing such township organization on a referendum vote. The procedure is further regulated by statute; and it may be noted that a smaller petition (only 50 votes) is required to present the question of adopting the township system than for the question of discontinuance, for which a petition of at least one-fifth of the legal voters is required.

Of the 102 counties in Illinois, 85 now have the township system. Only two counties have adopted township organization since 1890. The counties not under township organization are in the central and southern parts of the state; and most of them are small in area and population. Morgan county with 34,000 population in 1910 is the largest; and only six of these counties had more than 15,000 population.

In the 85 counties under township organization, there were 1,430 civil townships in 1910, with an average area of 35.3 square miles. Many of the civil townships, however, are smaller or larger than the congressional townships. Most townships have a population of from 1,000 to 2,000; but townships including villages and cities have a much larger population. In some cases there is a considerable population in the township outside of a city within its limits. In 1910, the town of Joliet had a population of 50,640, and the city of Joliet, 34,670.

The organization and powers of towns are regulated entirely by statutes. The legal authority is very limited. They are vested with corporate capacity, and may levy local taxes and make by laws for a few enumerated purposes. They elect a number of minor officials; but the matters which form the important business of New England towns are in Illinois mainly looked after by cities, villages and school districts.

Provision is made for an annual town meeting of the electors on the first Tuesday in April, for the election of town officers and the transaction of business; and special town meetings may also be held. But in operation the town meeting in Illinois is of slight importance. Its powers are closely limited and the principal town tax (for roads) is now levied without action by the town meeting. Attendance at the annual town meetings is in most places very small. Inquiries made for a committee of the General Assembly in 1912, secured replies as to attendance at the town meetings from only 440 of the 1430 towns in the state. Only 144 replies (barely a tenth of the towns) reported an attendance of more than 50 at the business meeting; and only 39 towns reported an attendance of over 100. In towns including cities of some size, the town meetings are of even less importance than in smaller places; they are seldom attended by more than a handful of voters and in some places no business meetings are held.

A town clerk in a town of 2,500 population in one of the northern counties reported an attendance of 13 persons, which included: "six judges and clerks of election, two town officers, one professional candidate for moderator, and one innocent bystander in the booth marking

his ballot, leaving three plain citizens, who were evidently interested in the meeting." The same officer stated that in a period of 25 years, there had been three occasions when the road and bridge tax was levied at the town meeting and two resolutions had been adopted. Ordinarily, the only business at the town meeting was to read the reports of town officers, and to levy the trifling town tax for miscellaneous purposes.

Nearly three-fourths of the county officers who replied to inquiries as to the value of town meetings reported that they were no longer of any substantial service, and many urged their abolition. It may be noted that the few cases where the town meetings were fairly well attended and where opinion in their favor was most pronounced were mainly from counties in the central part of the state, and not from the northern counties where New England influences have been most prevalent. In some instances at least, the larger attendance at such places seems have been due to local social customs rather than to interest in public affairs. In one town, the ladies serve dinner and supper at the town meeting, and this brings a considerable number from the country.

The number of elective town officers has been decreased by the recent abolition of the town collector and the reduction in the number of highway commissioners from three to one. There remain, however, to be elected in each town a supervisor, town clerk, assessor, highway commissioner and from two to five justices of the peace and constables. In addition, assistant supervisors are elected in the more populous towns. Justices of the peace and constables are elected for four-year terms; the other town officials are chosen for two-year terms; but some officers are elected each year. Primary elections are not required for town officers; and nominations are usually made at unregulated caucuses.

The supervisor is considered in some degree as the chief officer of the town; but he does not have the usual powers of a chief executive. He acts as town and road treasurer, and in most towns as overseer of the poor. The supervisor and assistant supervisors are members of the county board.

The town clerk keeps records of town meetings, the board of town auditors and highway commissioner, and certifies tax levies to the county authorities. The assessor makes the assessment of property for taxation. The highway commissioner has charge of town roads and bridges.

For each town there is a board of town auditors, consisting of the supervisor, town clerk and justices of the peace; and a board of health, consisting of the supervisor, assessor and town clerk.

In some cities town government has been largely abolished. By Act of 1877 any city may be separately organized as a town. In such cases, the powers of the town are mainly exercised by the city council, except the appointment of poor master; and the city council may unite certain town and city officers. By an optional act of 1901 (adopted by Chicago and Springfield) the powers of townships and

town officers in townships lying wholly within any city of more than 50,000 population may be exercised by county officers.

In counties not under township organization, road districts are established, in each of which there is elected a highway commissioner and district clerk; and in such counties justices of the peace and constables are elected by election precincts. The main differences between the two classes of counties are in the offices of supervisor and assessor and the town boards. The abolition of town assessors has been strongly urged for many years. If this was done, and smaller county boards were established in place of the boards of supervisors, there would be almost nothing left of town government.

Tax Administration. The assessment of property for state and local taxation in Illinois is made by county officers in the 17 counties not under township organization, and by joint action of county officers and town assessors in the 85 counties under township organization. There have been long continued complaints of undervaluation and inequalities in the assessments under the present system; and the revenue commission of 1886 and the special tax commission of 1910 recommended the abolition of town assessors, and that assessments be made by county assessors.

Taxes are levied by the various state and local authorities under a numerous and complicated series of statutes; while a limitation on the total amount of local taxes is attempted by the intricate provisions of the Juul law. The present arrangements are confusing and lead at times to the extension of invalid levies and to litigation. There is need for a simpler and more concentrated responsibility for making tax levies and for limiting the aggregate of local taxes.

The collection of taxes in counties under township organization is now vested in the county treasurer; and in counties not under township organization the sheriff is district and county collector.

Road administration. The revised road and bridge law of 1913 and later amendments have established a simpler and more effective system of local highway administration. Formerly there were two general laws, one for counties under township organization and another for counties not under township organization, with a number of optional provisions in each law.

Under the present law, there is a single highway commissioner elected in each town and road district (except in towns within or wholly included in a city or village), who has charge of laying out, constructing and repairing local roads, and who prepares the poll tax list, and determines and certifies to the county board the amount necessary to be raised by taxation for the construction, maintenance and repair of roads and bridges in the town or road district.

The county superintendent of highways has charge of the construction and maintenance of roads and bridges from county funds; visits and inspects roads and bridges in each town or road district, and advises and directs the highway commissioners; and supervises the repair and maintenance of state aid roads.

The State Department of Public Works and Buildings, acting through the Superintendent of Highways, has general supervision and control of the construction of state aid roads.

Expenditures on public highways have increased rapidly, especially in recent years. The local road and bridge taxes have risen from \$1,259,851 in 1879 to \$9,646,000 in 1917; and in addition large sums have been expended on roads and bridges from county taxes and bond issues, and from the state road funds. A \$60,000,000 state bond issue for a general system of state roads has been authorized.

Justices and constables. Justices of the peace and constables are elected by towns and election precincts throughout the state, except in the city of Chicago. In Chicago, there is a municipal court; in 27 other cities there are city courts with elected judges;¹ and in many other cities and villages there are elected police magistrates.

Justices of the peace are commissioned by the governor. They have both civil and criminal jurisdiction within their respective counties in an enumerated and limited list of cases under state laws, and in cases under municipal ordinances. Under the criminal code, they are conservators of the peace; and on complaint they may issue warrants for arrest in any criminal case, conduct preliminary examinations of accused persons, and release them on bail or commit for trial. They are also authorized to celebrate marriages. In counties under township organization, they are members of the board of town auditors; and in counties not under township organization a justice of the peace in each precinct may be designated by the county board as overseer of the poor.

Constables are peace officers, with power to arrest any one committing crime in their presence. But to a large extent they act as the ministerial agents of the justices, serving warrants of arrest and subpoenas on witnesses, and execute judgments.

There are no public records or effective supervision over justices of the peace and police magistrates; and under the fee system which prevails there is room for mismanagement.

Criticism of the justices of the peace in Chicago led to the adoption of the provision in the constitutional amendment of 1904 authorizing their abolition; and this was done when the municipal court of Chicago was established. But in other cities and villages with city courts or police magistrates, the justices of the peace and constables must also be continued. The constitutional provisions might be modified so that the work of the justices of the peace and constables could

¹ The city courts have the same jurisdiction as circuit courts, and do not replace the justices of the peace.

be combined with that of other local courts and the police, and the provision requiring their election be eliminated.²

School administration. Public school administration is more systematically organized than any other branch of public administration. But the present arrangements are highly complex, involving state, county, township, school district and high school district officials.

Local administration is primarily based on the petty school district, each of which outside of cities and some villages has a single school; but the district officials are subject to township, county and state officers.

There are three main classes of local school districts. In each school district with less than 1,000 inhabitants, there is a board of directors of three members, one of whom is elected annually on the third Tuesday in April, for a term of three years. In school districts having a population of not less than 1,000 and not more than 100,000, there is a board of education consisting of a president elected annually, and a minimum of six members, one-third elected each year for terms of three years. Three members are added for each additional 10,000 population, up to a maximum of fifteen members. In cities with a population of over 100,000 (Chicago) the board of education consists of 11 members, appointed by the mayor with the advice and consent of the council. In a number of cities, local school boards are still organized under special acts passed before 1870.

Local school districts are usually parts of school townships; but in a good many cases school districts cross township and sometimes county lines. In many cases school districts correspond more or less closely in area to cities and villages; but the boundaries of the school district and city or village do not necessarily correspond; and very frequently school districts include considerable territory outside of the city or village; while in other cases cities and villages of considerable population are in two or more school districts.

In any case the school district and the school board are governing bodies distinct from the city or village corporation.

In 1918 there were 11,899 local school districts in Illinois. Of these 11,252 were small school districts governed by boards of school directors, 619 districts had boards of education (including high school districts), and 28 were under special charters.

In addition to the usual local school districts, several hundred of which (mainly city districts) maintain public high schools, there has been a further development, under recent legislation of special high school districts for the maintenance of high schools. Under an act of 1905 authorizing any school township to establish a township high school, about 100 such high schools were established. In order to extend the opportunities for high schools, an act was passed in 1911 to authorize the organization of high school districts composed either of a school township containing a school district with a population of

² See Bulletin No. 10, on the Judicial Department.

1,000 or any contiguous and compact territory in the same or different townships, upon petition and a local vote in the proposed district. Under this act, nearly 200 districts were formed; and the school report for 1916 showed 166 township high school boards in operation. At the October 1916, term of the Supreme Court, this act was held unconstitutional (as special legislation based on an improper classification), as was also an act of 1915 providing for the payment from the state school fund of high school tuition for pupils from districts with no high schools.

An act of 1917 validated the organization of high school districts under the earlier acts; and another act of the same year, framed to meet the objections of the Supreme Court, made further provisions for the formation of community high school districts, and also for the formation of non-high school districts comprising the part of each county not included in school districts maintaining high schools. There are irregular variations in the composition of the boards of education provided under these different provisions. For districts organized under the previous acts, the high school board consists of a president and six members elected for three year terms; for the new community high school districts, the boards consist of only five members; and for the non-high school district of three members, one to be elected each year, with the county superintendent as a member and secretary without vote, this board to levy taxes and pay expenses for high school tuition for pupils from the non-high school district. In 1918 there were 176 township high schools and 2 community high schools.

Each congressional township is established as a school township in each of which there are elected annually three school trustees. The school trustees establish and change the boundaries of school districts, appropriate and distribute to the school districts the income of township school funds and the state school fund, and elect a township treasurer. In school townships whose boundaries coincide with the boundaries of civil towns, the school trustees are elected at the same time as other town officers; but in the many cases where the school and civil townships are not coterminous, the election for school trustees is held on the second Saturday in April.

The adoption of the township in place of the small school district as the primary unit of local school administration was urged by the Education Commission of 1911, as a means of increased economy and efficiency in the public school system. If this were done the school township, with one school authority, could take the place of a number of districts with separate boards of school trustees and school district directors and, in many places, an additional high school board of education. School funds could be more economically managed by the county authorities for all the school townships in each county.

Drainage districts. The drainage laws of Illinois present a highly complex and confusing body of legislation. The constitution of 1870 contained a provision (article IV, section 31) that:

"The general assembly may pass laws permitting the owners or occupants of lands, to construct drains and ditches for agricultural and sanitary purposes across the lands of others."

In 1871 an act was passed "to provide for the construction and protection of drains, ditches, levees and other works." But some years later, it was held that section 9 of article IX, authorizing special assessments and special taxation for local improvements, limited the use of these methods to cities, towns and villages, and that special assessments could not be used for drainage works by other local authorities.³

This decision led to the adoption of a constitutional amendment in 1878, adding to section 31 of article IV, the following:

"and provide for the organization of drainage districts and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state, by special assessments upon the property benefited thereby."

Following the adoption of this amendment, another drainage law was passed, in 1879, repealing the law of 1871. In 1883 an act relating to county ditches and drains was passed. In 1885, an act was passed authorizing cities and villages to construct drains, etc., by special assessment, and another to provide for drainage for agricultural and sanitary purposes. A number of acts have also been passed for the creation of sanitary districts. These laws have been frequently amended, and also supplemented by other legislation.

Under the act of 1879, drainage districts may be formed on petition and proceedings in the county court; and when any petition is approved, the court appoints three commissioners for terms of three years, to lay out and construct the proposed works, subject to further proceedings before the court on the report and assessment roll prepared by the commissioners.

Under the act of 1885, the town highway commissioners are constituted drainage commissioners for all drainage districts in their respective towns; and provision is made for the organization of drainage districts on petition and proceedings before such drainage commissioners, with district commissioners to be elected, (for three-year terms), by the adult owners of land in the district. In connection with special assessments, appeals may be taken to the county court. Provision is also made for sub-districts, river districts, districts by user, and districts by mutual agreement; and also for establishing special drainage districts, lying in several towns or counties, on proceedings before the county courts.

These two laws appear to have been prepared primarily with reference to drainage for agricultural purposes, though sanitary purposes are also included. The laws relating to sanitary districts have had in view primarily the problem of sewage disposal for urban communities, although also including other objects. An act of 1887 provided for organizing the city of Chicago into a drainage district; but the sanitary district of Chicago was organized under an act of 1889 general in form, providing for sanitary districts. Another act, of 1907,

³ *Updike v. Wright*, 81 Ill. 49 (1876).

to create sanitary districts in certain localities, was designed for the region including East St. Louis, where the East Side Levee district has been organized. The act of 1917 to create sanitary districts and to provide for sewage disposal had in view the problems of Decatur and Bloomington; but is also adapted to other localities. All of these acts provide for the creation of special districts on petition and a local popular vote; and have been used for the formation of districts including one or more urban municipalities and surrounding territory. The acts of 1889 and 1907 provide for the popular election of trustees; that of 1917 provides for the appointment of trustees by the county judge.

The laws relating to drainage and sanitary districts make no provision for any report to any state officer of the formation of such districts; and no official records are available in any state office of the districts formed or in operation. The county records should show the formation of sanitary districts, and of drainage districts organized under the act of 1879; but many of the districts formed under the act of 1885 are established by proceedings before town officers; and the only record provided for is that of the town officers. As a result, there is no complete list of such districts.

An investigation by the Rivers and Lakes Commission in 1911 disclosed the existence of 782 drainage districts in the state. 'But this may not have been complete; and in any case does not indicate the total number of districts now in existence. Districts were reported in 81 counties in all parts of the state, the largest number in one county being 48 in Champaign county. The aggregate area of these districts was about 12,000 square miles, or a little more than a fifth of the total area in the state.

Next to the Sanitary District of Chicago, the largest drainage district reported was the Lower Salt Fork Drainage District in Champaign County, with an area of 168,000 acres and 23 miles of ditch. The Sny Island Levee and Drainage District in Adams, Pike and Calhoun counties had an area of 110,000 acres and 55 miles of levee. The East Side Levee and Drainage District (organized under the act of 1907), in St. Clair and Madison counties had 55,000 acres, 30 miles of levee and 20 miles of canal.⁴

Serious complaints have been made of the confused state of the drainage laws, and the numerous drainage districts, mostly dealing with small disconnected areas and often with antagonistic authorities in the same watershed. The Rivers and Lakes Commission urged the need for comprehensive plans for entire watercourses, so as to secure better flood control and more effective regulation.⁵

Cities and villages. Incorporated towns and cities were first organized under special acts of the General Assembly. A general law for the incorporation of towns was passed in 1831, under which many

⁴ Randolph, Robert Isham: *Land Drainage in Illinois*, Rivers and Lakes Commission, Bulletin No. 4, April 1, 1912.

⁵ Rivers and Lakes Commission, Annual Report for 1916, p. 16.

towns were organized; but much special legislation for towns continued, and until 1870 city government was regulated mainly by special charters.

After the prohibition of special legislation for cities, towns and villages, in the constitution of 1870, a general cities and villages law was enacted in 1872. Most of the previously existing cities and incorporated towns have reincorporated under the act of 1872 (335 to 1917); and 763 new cities and villages have been incorporated under this act. There are still, however, a few cities and a number of incorporated towns and villages operating under special laws passed before 1870; and in other places provisions of special charters relating to schools are still in force.

Under the general provisions of the Cities and Villages act, the city government consists of a mayor, city clerk, and treasurer, and from 6 to 70 aldermen, elected for two year terms, one of the two aldermen from each ward being elected each year. The city attorney is provided for by statute, but is now appointed. In villages there is a president elected annually, and six trustees, three elected each year for two-year terms. Other officers are provided by optional laws, and by local ordinances.

An act of 1910 authorizes cities and villages to adopt the commission form of government, under which cities and villages which adopt the act are governed by a mayor and four commissioners, all elected at large for terms of four years.

The Cities and Villages act of 1872 has been freely amended and supplemented by later legislation. Some of this later legislation applies to all cities, villages and incorporated towns. Other acts apply to all cities and villages which have adopted the general law. Still other acts apply only to certain classes of cities and villages (usually within certain population limits), or to cities and villages which adopt them. Since the adoption of the constitutional amendment of 1904 authorizing special legislation for Chicago, subject to a local referendum, a number of special acts for Chicago have been passed and approved by the local voters.

Legislation on city and village government now forms a large and complex volume of statutes; and every session of the General Assembly results in the addition of a considerable amount. Laws relating directly to cities and villages form more than 300 pages in Hurd's Statutes; and other laws on municipal affairs applying mainly to city and village communities bring the total to about 500 pages.⁶

Mention may be made of the acts relating to public libraries which provide for boards of library trustees (elected in cities and appointed in villages), which have control over the libraries and their funds, and are substantially independent of the city and village government.

Park districts. Three park districts were created in Cook County by special legislation before 1870; and a considerable

⁶ See Bulletin No. 6, on Municipal Home Rule.

amount of later legislation has been passed applying only to these districts. Two general and optional laws for the organization of park districts were passed in 1893 and 1895, under which a number of such districts have been organized in different parts of the state. Additional park legislation has also been passed for certain classes of cities in 1899 and 1907, and (in 1911) for town and township parks and forest preserve districts.

Under the act of 1893 provision is made for the organization of pleasure driveway and park districts in any area of contiguous territory containing two or more incorporated cities, towns or villages, and lying wholly within the same or adjoining townships, on petition and after an election ordered by the county judge. In each of such districts a president and six trustees are elected for terms of two years, one-half of the trustees each year. The act of 1895 provides for organizing as park districts any territory in the same county or in two adjoining counties under township organization, on petition and after an election. In each district organized under this act, there are five commissioners elected, one each year for a term of five years.

Under these laws park districts have been organized for East St. Louis, Peoria, Springfield, Rockford and a number of other cities in different parts of the State. In Cook County, 26 such park districts have been organized in addition to the three large park districts established by special legislation,—14 within the city of Chicago, and 12 for cities and villages outside of Chicago. A forest preserve district has been formed comprising the whole of Cook County for which the board of county commissioners is ex-officio the board of forest preserve commissioners.

Questions as to the exact legal status of park districts have been brought up in a number of cases before the courts; and have led to a number of judicial decisions, under which they are given a peculiar position. Under the general park laws and some of the special acts, park boards are given powers of local taxation; and are classed as corporate authorities, as only the corporate authorities of a municipal corporation may levy taxes for corporate purposes. It has been held that by the phrase "corporate authorities," must be understood as, "those municipal officers who are either directly elected by" the population of the district, "or appointed in some mode to which they have given their assent." Under this rule, an act providing for the appointment of a park board by the governor has been sustained, when the people of the park district had voted in favor of adopting the act. But where an act providing for the appointment of a park board by the circuit judges had been adopted by the proposed park district, a later act providing for appointment by the governor, which was not submitted to the people subject to taxation, was held void.⁷ The Lincoln Park Board in Chicago does not, however, have the power of taxation;

⁷ *People v. Salomon*, 51 Ill. 37 (1869); *Harward v. St. Clair Drainage Co.*, 51 Ill., 130 (1869); *Cornell v. People*, 107 Ill. 372 (1883); *People v. Block*, 276 Ill. 286 (1916).

and park taxes for this district are levied by the taxing authorities of the towns included in the district.

As already noted, it has been held that under the constitution of 1870 only the corporate authorities of cities, towns and villages could make local improvements by special assessment or special taxation, and that drainage districts, not being included, could not use these methods of paying for local improvements until specifically authorized by the constitution. But it has been held that park commissioners may be vested with authority to make such improvements by special assessment or special taxation, on the ground that they are corporate authorities of the cities, towns or villages in which the park districts are located.⁸

Public health districts. An act of 1917 provides for the organization of public health districts composed of one or more towns or road districts, on petition and local election. No additional officers are elected for such districts; but the district boards of health consist of existing officials, the county board for districts in counties not under township organization; the supervisor, assessor and clerk for districts composed of a single town; and the chairman of the county board with the supervisors of towns and clerks of road districts when the district comprises two or more towns and road districts.

The district boards of health are authorized to appoint district health officers, from those held to be competent by the state board of health, and also to appoint public health nurses, and to provide necessary health measures, and to levy a tax for such purposes.

Only one public health district appears to have been organized --for La Salle, Peru and Oglesby, in La Salle County.

Complexity of local government. As a result of the numerous different types of local districts provided for by the constitution and statutes, and the still more numerous and detailed laws relating to them, the machinery of local government in Illinois presents a highly intricate and complicated network of local areas and authorities, more confusing than in any other state. It is true that not all of the different kinds of districts are to be found covering all the territory of the state. The more complex arrangements are to be found in the urban communities; and among these the conditions are most confusing in the larger communities. But even outside of the urban communities the situation is far from simple.

⁸ *Dunham v. People*, 96 Ill. 331 (1880); *West Chicago Park Commissioners v. W. U. Tel. Co.* 103 Ill. 33 (1882); *West Chicago Park Comrs. v. Sweet*, 167 Ill. 326 (1897); *West Chicago Park Comrs. v. Farber*, 171 Ill. 146 (1898); *Van Nada v. Goedde*, 263 Ill. 105 (1914).

Conditions in Chicago and Cook county present the maximum degree of complexity and confusion; and these are described in some detail in Bulletin No. 11. As an illustration of conditions in other parts of the state, attention may be called to the group of local agencies for the region including East St. Louis and its neighborhood, which has been combined for sanitary and drainage purposes into the East Side Levee and Sanitary District, organized under an act of 1907.

The East Side Levee District includes parts of two counties,—St. Clair and Madison. Within its limits are the whole or part of nine townships, (four in St. Clair county and five in Madison county); the cities of East St. Louis, Venice and Granite City; the East St. Louis Park District; several villages and also school districts. The total population of the levee district is estimated at about 150,000. The total assessed valuation is \$24,623,162, of which about three-fourths is in St. Clair county and five-eighths in the city of East St. Louis.

Somewhat similar conditions are to be found in other parts of the state, where there are several urban municipalities in close proximity to each other,—as Rock Island and Moline, Champaign and Urbana, and LaSalle and Peru.

The problem of local government for such communities, and also for many other localities where the present situation is only slightly less complex, could be more effectively dealt with through a more unified and simpler machinery.

One result of the existing situation is the enormous burden placed on the voters in selecting the large number of officials for the numerous governing bodies. A large number of elective county officials are required by the state constitution, and others have been added by statute; and these are elected at the general elections in November of even years, at the same time as state officials, members of Congress and (at presidential elections) presidential electors. From 35 to 70 officials are elected at one time; and the ballots often contain the names of 200 candidates in down state counties and more than 400 candidates in Cook county.⁹

For other local districts, the number of officials to be elected for each governing body at one time is not so large; and as the elections for the different local districts are held at different times, the total number to be voted for at one election is in most cases a good deal less than at the November elections. But this is secured by multiplying the number of separate local elections; and these spring elections are so many as to impose a serious burden on the conscientious voter. There are seven regular local elections each year in the spring months, and in years when circuit or supreme court judges are elected there are eight elections within five months, as follows:

Primary election, in cities. February.

Drainage district elections, March.

Township primary. (No time fixed by law).

⁹ See Bulletin No. 5, on the Short Ballot.

Town and road district election, April, first Tuesday.

School Trustees election, April, second Saturday.

City and Village elections, April, first or third Tuesday.

School directors and Boards of Education, April, third Saturday.

Supreme and circuit court judges, election, June.

These are in addition to the general state primaries and elections in September and November every second year and the presidential primaries in April every fourth year.

Local finances. Something of the importance of local government as a whole, and of the relative importance of different local authorities, may be indicated by a brief examination of available data as to local finances. The scope of this inquiry is necessarily limited by the absence of adequate official public records of local finances, and the consequent lack of anything like complete information. The table below presents statistics as to state and local taxes levied for the years 1872, 1880, 1890, 1900 and 1917.

State and Local Taxes Levied.^a

	1872	1880	1890	1900	1917
State Tax.....	\$ 3,947,014	\$ 3,202,289	\$ 2,974,240	\$ 4,102,180	\$23,632,489
County Taxes	5,168,667	4,649,734	4,737,649	6,179,195	17,406,132
City and Village Taxes	1,400,656	5,615,292	12,325,827	10,972,543	31,630,860
School Taxes				19,227,721	48,912,393
Township Taxes.....					1,705,866
Road and Bridge Taxes				2,780,890	9,646,272
Drainage Taxes.....					4,822,627
Park Taxes.....					6,366,328
Reg. Bond Taxes.....		1,350,821	1,364,285	984,411	784,285
All Other Taxes....	9,305,282	9,715,189	12,589,705	5,994,988	3,702,632
Total	\$19,821,620	\$24,533,326	\$33,991,709	\$50,240,931	\$148,609,889

^a Compiled from Reports of the Auditor of Public Accounts. Cents are disregarded.

It will be noted that in 1872, local taxes were about four times as much as the state property tax; and that in 1900 while the state tax was but little more than in 1872, local taxes had nearly trebled, and were more than eleven times the state tax. Since 1900, the state tax has increased rapidly, and at a relatively larger rate than local taxes; but the local taxes had again nearly trebled in 1917, and were five times as much as the state tax in that year.

County taxes showed little increase to 1900, but since then have more than trebled. For other local taxes the data is not given separately for the earlier years. But city and village taxes have increased rapidly, and trebled from 1900 to 1917; school taxes in 1917 were more than two and a half times as much as in 1900, and form the largest item in the list of taxes; road and bridge taxes were three and a half times as much in 1917 as in 1900. Nearly all the drainage and park taxes are reported from Cook County.

The declining importance of town government is indicated by the comparatively small amount of township taxes, outside of the road and bridge tax.

The data as to tax levies is practically the only information collected in Illinois as to local finances, except as to schools. The various local authorities have records of their own financial transactions; and a number of cities and counties publish financial reports. But none of these give complete information as to the public finances of all the local authorities in any one community; while the great majority of local governments appear to make no public reports of their finances.

An examination of local county records in two counties and of town records in one county for a committee of the General Assembly in 1912, disclosed serious deficiencies in the methods of keeping local financial records and accounts, which probably exist in most counties in the state. There was no budget system nor central record of all the financial transactions of county officers. Separate records were kept by the several county officers, who in some cases paid the expenses of their offices from fees collected, and only the balances, if any, were paid over to the county treasury. The accounts kept by the separate officers were the most primitive system of cash records, with no attempt at classification of expenditures, or any balance sheet of assets and liabilities. Nor was any attempt made to prepare general statements combining the records of the various county officials. The records of town officers disclosed not only the absence of any system of accounts, but the absence of the most essential data as to cash transactions, and frequent errors in the extension of figures.

More satisfactory financial accounts and reports are made by some of the larger cities; but even the best of these are not based on any uniform plan so that comparisons can be made with those of other cities.

One obstacle to a comprehensive system of financial records is the lack of a uniform fiscal year even for county business. Supervisors are elected and take office in April, but their fiscal year begins September 1; while other county officers take office and begin their fiscal year on December 1. Most cities begin their fiscal year on May 1; but Chicago and some others begin on January 1. School accounts and records are based on the school year beginning July 1.

In connection with the more systematic supervision of local school authorities by the state department of public instruction and the county superintendent of schools, better records and reports of school finances are prepared than of any other branch of local administration in Illinois. The following summary of the accounts of school district funds for 1917-18 indicates the sort of data that should be available for all other local districts.

School District Funds 1917-18.^a

Balance, July 1, 1917.....	\$11,832,103
Receipts:	
Distribution of trustees.....	\$ 5,115,903
District Taxes	44,744,835
Tuition fees paid by pupils.....	283,785

School District Funds 1917-18.^a—Concluded.

Sale or rent of school property.....	235,935	
Sale of school bonds.....	3,226,681	
Insurance adjustments	345,480	
Other sources	1,164,512	55,217,132
Net receipts and balances.....		\$67,049,235
From other township treasurers.....	\$451,687	
Transfers of pupils.....	700,795	1,152,482
Grand Total		\$68,201,717
Expenditures:		
General Control	\$ 1,294,537	
Instruction	29,001,198	
Operating school plant.....	5,961,635	
Maintenance of plant.....	3,236,889	
Auxiliary agencies	2,012,893	
Total current expenses.....		\$41,507,153
Capital outlay		8,745,373
Bonded debt		2,351,044
Net expenditures		\$52,603,570
Paid to other township treasurers.....	\$498,867	
Tuition of transferred pupils.....	959,273	1,449,140
Balance, June 30, 1918.....		\$14,149,006
Grand Total		\$68,201,717

^a Illinois School Statistics, 1918, pp. 4-5. Cents are disregarded.

In the absence of official records made under state authority, an attempt is made by the United States Census to compile statistics as to local finances. Annual reports are published for cities of over 30,000 population; and more extensive reports once in ten years for counties and smaller municipalities. Even the latter reports do not attempt to cover all the local authorities in the smaller communities; and the data for the authorities from whom information is secured are necessarily incomplete, on account of the deficiencies in the local records. The following summary of the census data for 1913, in the last report on Wealth, Debt and Taxation, is presented, as the best available record of local revenues and expenditures in Illinois.

County and Municipal Finances in Illinois, 1913^a

Revenues.	Counties.	Incorporated places over 2,500.
General Property Taxes.....	\$12,374,734	\$47,354,715
Special Assessments		10,556,578
Liquor Licenses	19,225	9,708,602
Business taxes and licenses.....	112,825	2,535,434
Fines, forfeits and escheats.....		643,566
Highway Privileges		3,894,097
Interests and Rents	173,537	1,405,515
Subventions and Grants		1,248,560
Donations and Gifts		356,057
Earnings of depts. and misc.....	3,193,444	1,725,829
Public Service Enterprises.....		9,251,260
Total Revenue Receipts.....	\$15,873,765	\$88,680,213
Sales of Investments, etc.....	28,201	\$ 1,993,403
Loans	3,275,870	39,924,613
Trust and Agency Transactions.....	55,897,271 ^b	593,628
Counterbalancing Transactions	108,944	681,165
General Transfers	14,353	11,223,511
Total non-revenue receipts.....	\$59,324,639	\$54,416,320
Total Receipts	\$75,198,404	\$143,096,533

County and Municipal Finances in Illinois, 1913.^a—Concluded.

Expenditures.	Counties.	Incorporated places over 2,500.
General Government	\$7,122,644	\$ 5,368,536
Protection to persons and property.....	740,763	13,375,024
Health and Sanitation.....	53,970	4,984,097
Highways	406,667	4,963,566
Charities, Hospitals and corrections.....	4,106,733	609,133
Schools	104,323	16,840,018
Libraries .....	.....	598,108
Recreation	3,786	3,118,997
Miscellaneous	247,589	1,587,726
Total General Depts.....	\$12,846,375	\$51,445,205
Public Service Enterprises.....	.....	\$ 5,246,371
Interest	\$ 487,831	4,986,032
Outlays	1,828,437	25,685,928
Total Governmental Cost Payments.....	\$15,162,643	\$87,363,536
Purchase of Investments, etc.....	\$ 2,993	\$11,305,008
Redemption of Debt.....	3,822,224	37,866,397
Trust and Agency transactions.....	55,839,839 ^b	442,567
Counterbalancing transactions.....	108,944	681,165
General Transfers	14,353	6,252,969
Total non-governmental cost payments.....	59,788,353	\$56,548,106
Total payments	\$74,950,996	\$143,911,642

^a U. S. Census Report on Wealth, Debt and Taxation.^b Mainly tax collections for other local districts and for the state.

IV. LOCAL GOVERNMENT IN OTHER STATES.

As local government in the United States is determined by the constitutions and laws of the several states, there are many variations in the organization and powers of the local authorities of the different states. But there are certain important institutions and methods which follow the same general ideas in most of the states, and other institutions which are similar in related groups of states. These conditions are due to the fact that American institutions have developed from those of England, to the constant intercourse between the various states, and to the conscious and unconscious imitation and adaptation by the several states of the institutions and practices of other states.

Historical development. Some features of the English system of local government in the seventeenth century will serve to explain the beginnings of local government in the American colonies. At that time England was divided into counties or shires, and these in turn into parishes; while there were still survivals of older divisions of shires known as hundreds; and scattered throughout the country were many manors and boroughs, with special arrangements and privileges.

The important county officials were the lord lieutenant, the sheriff, the coroner, and justices of the peace. All of them, except the coroner, were appointed by the Crown; but with the decline of the active control of the Privy Council, local administration in practice was much decentralized. The lord lieutenant was head of the militia system. The sheriff was chief conservator of the peace, and executive agent of the centralized judicial courts. Local affairs were mainly looked after by the justices of the peace, acting in some matters individually and in others in petty or special sessions of several justices, while the justices in each county also held collectively quarterly sessions as a court of criminal jurisdiction, which acted also as the judicial and administrative authority for the county.

Parishes were primarily ecclesiastical districts; but under the legislation of the Tudors they became civil districts, in poor law and local highway matters and the assessment of local taxes—taking the place of the earlier towns. The governing body was the parish vestry, which in theory was open to all inhabitants, but in practice had become in many places a select self-continuing body. Parish officers included constables, overseers of the poor, and surveyors of highways.

Manors, with special local courts and other privileges, were fast disappearing. But there were several hundred boroughs, with their

own local courts and property, and separate representation in Parliament. In most of these, local affairs were managed by a self-perpetuating council; but in some places the council was elected by a varying body of freemen.

In the American colonies manors and hundreds were formed in a few places (in Maryland, Virginia and New York); but they soon disappeared. Counties were organized gradually in most of the colonies. Parishes were established in some of the southern states, but were of little importance. In New England and the Middle Colonies towns were formed; and in New England the towns became the most important unit of local government. In these New England towns the central organ was the open town meeting of legal voters, which elected selectmen and other officers, voted appropriations and local taxes, and passed local by-laws. In New York, New Jersey and Pennsylvania, towns were of less importance than in New England.

Important changes in county government were made during the colonial period. Toward the end of the seventeenth century locally elected county boards (of different types) were established in New York, New Jersey, and Pennsylvania, which gradually acquired the fiscal and administrative powers of the justices of the peace. In Pennsylvania sheriffs were made locally elective (in 1705). A number of new county officers were established: county treasurers in Massachusetts in 1654, local prosecuting attorneys in Connecticut in 1704, and recorders of deeds in most of the colonies. A number of boroughs and cities were also established in the middle and southern colonies.

In the organization of state governments at the time of the Revolution, there were some changes in local government but no radical reconstruction. Many of the first state constitutions contained provisions about county government, with some changes in the direction of a more decentralized system, by means of appointment by the legislature (and in a few cases local popular elections) and definite terms for sheriffs, justices of the peace, and militia officers. Towns were mentioned only in the New Jersey constitution; and the government of towns and parishes remained as before.

With the expansion of population, local institutions were developed in the new states, and further changes were made. Up to the middle of the nineteenth century these changes were mainly in the direction of a more democratic and decentralized system. The electoral franchise was extended to include all male citizens. County officials were made locally elective; and the number of such officials was steadily increased. In most of the states an elective county board took over the administrative functions of the justices of the peace; while sheriffs, prosecuting attorneys, county treasurers, county clerks, recorders, and justices of the peace all became elective officials with short terms. Towards the end of this period constitutional restrictions on the formation of new counties began to appear.

Towns were also organized in the northern states, with functions similar to those of New York and Pennsylvania; but in the southern states the parish disappeared as a civil district (except in Louisiana, where it corresponds to the county); and the county became the main

unit of local government. Cities and villages were also established in all of the states, organized for the most part under special charters, reflected the same ideas as were affecting county government. For local school administration small school districts were formed, which marks the development of specialized local districts and a further step in decentralization. These developments in local government in other districts than counties were for the most part made by statutory legislation; but in some states the township system was authorized by constitutional provisions.

Since the Civil War there have been important changes in local government, superimposing new elements on the former machinery, and resulting in such a complexity that it is difficult to recognize any clearly defined system. The organization of counties has been extended throughout the country: and the scope of county administration has greatly increased in amount and relative importance; but except for a few recent experiments, there has been no important changes in the general plan of county government. On the other hand, the general system of town or township government has not extended to the newer states beyond the arid plains; while in the older states outside of New England the town has declined in importance.

Cities and villages have multiplied and increased enormously; and the most important developments in local government have been in connection with these urban municipalities. More highly centralized governments have been established, such as the mayor plan, the commission form, and the city manager plan. Another development in recent years has been a marked increase in the number of special local districts and the appearance of many new types of such districts.

Constitutional provisions on local government have dealt for the most part with counties and county officers, prohibitions on special legislation for particular municipalities, and restrictions on municipal debts. Beginning with Missouri in 1875, thirteen states have adopted constitutional provisions for municipal home rule, and two states have provisions for county home rule. In other respects most of the later developments in local government have been by legislation.

Another tendency of the later period in statutory legislation has been the development of state administrative supervision over local authorities, in such matters as taxation and finance, school administration, public charities, public health and public utilities.

Constitutional provisions. There is a good deal of variation in the extent and character of constitutional provisions relating to local government in the different states. In the New England states and a number of others (mainly those where there has been no general revision of the state constitution since 1860 as Iowa, Oregon and Wisconsin), there are few provisions on local government, and these are in scattered sections of the constitutions. But in about two-thirds of the state constitutions there is an article (and in some states two or three articles) on such subjects as Counties, Counties and Town-

ships, and Municipal Corporations. In several states (Missouri, Utah, and Washington) there is an article on Counties, Cities and Towns; and the Michigan constitution of 1908 has one article with the more comprehensive title of Local Government. But in most of these states, in addition to such articles, there are other provisions on local government in the articles on the legislative department, judicial department, and taxation or finance. The most detailed provisions are in the constitutions of California, Colorado, Michigan, Missouri, Oklahoma, and Washington.

Most common are provisions relating to county officers, and restrictions on the formation of counties, on special legislation, and on municipal debts. Municipal home rule provisions in a number of states are in considerable detail. In some cases there are detailed provisions for particular communities, such as those relating to Baltimore in the Maryland constitution, and to St. Louis in the Missouri constitution.

General characteristics of counties. Counties are usually established as bodies "politic and corporate"; and by these terms it is indicated that they are at the same time districts for purposes of state administration and also for certain local purposes. Their functions as state agents are considered the more important; and in a number of states they are still considered as *quasi* corporations, and not municipal corporations in the full sense, as in Illinois.

Usually the state legislature has power to establish counties; and in the North Atlantic group of states and some others there are no constitutional limitations on this power. But the constitutions of most states now impose various restrictions. Most frequently new counties can only be formed with the consent of the voters; and there is a minimum area—most commonly about 400 square miles, but ranging from 275 square miles in Tennessee to 24 congressional townships (about 860 square miles) in North Dakota and 900 square miles in Texas. About a third of the states also require a minimum population, varying from 1,000 in North Dakota to 10,000 in Ohio. Several states authorize cities with more than a certain population (20,000 in Minnesota, 100,000 in Michigan, and Missouri) to be organized as counties, without regard to the minimum area.

About a third of the states require a local referendum for changes in county lines; and about the same number require a local referendum for a change in the county seat, many requiring a three-fifths or two-thirds vote for this purpose. About a third of the state constitutions provide that where part of one county is transferred to another, there must be a *pro-rata* adjustment of debts.

In most states new counties, or changes in county lines, are now seldom made; but in a few of the newer states the creation of new counties and readjustments of boundaries are still not infrequent.

Most of the larger states have from 60 to 100 counties. Delaware has only three counties and Rhode Island five, while Texas has 245.

In area and population there are wide variations. Most counties have from 400 to 650 square miles. In population most counties have between 10,000 and 30,000; but in the North Atlantic states more than half the counties have over 50,000 population, and there are comparatively few counties in other populous states as small as a considerable number of those in Illinois.

According to the traditional treatment of local government in the United States, county government has been considered of most importance in the Southern states, and of least importance in New England. But by the quantitative standard of per capita expenditure, the county is now of greatest importance in the far west; and next to these comes the Middle Atlantic and North Central States, where the largest aggregate county expenditures are made. In the Southern and New England states county expenditures are of less importance.

County government. About two-thirds of the state constitutions have definite provisions for the election of a list of county officers, with further provisions as to qualifications, term, and compensation; but other officers may also be established in these states by law. In a few states (Ohio, Minnesota, Kansas, Nebraska, and Wyoming) there is a general provision authorizing the legislature to provide for the election of county officers; while in other states (mostly in New England and the South), the legislature exercises this power without express provision in the constitution.

But whether regulated by the constitution or by statute, no definite principle seems to have been followed in the organization of county government, except that of popular election. There is no clearly defined chief officer of the county, corresponding to the governor of the state or mayor of a city. Nor is there any body with important powers of local legislation, corresponding to the state legislature or city council. The county officers form a loose aggregation, with no effective responsibility or control.

In all but two states (Georgia and Rhode Island) there is an elective county board in each county, which usually levies county taxes and has supervision over certain matters of local administration, but with little control over the other elective county officers. In about two-thirds of the states these county boards are small bodies, usually of three members, elected at large and called county commissioners; but in some states with small boards the number may be as many as five, and in Iowa and California the maximum is seven and in Virginia eight; and in some of these cases the members are elected by districts and the boards are called boards of supervisors. In other states the county boards are larger (usually from 15 to 50 members) elected by townships or districts. Boards of supervisors of this type are provided in New York, New Jersey, Michigan, and Wisconsin; and the police juries in Louisiana and county courts in Kentucky, Tennessee and Arkansas have a similar organization. In a few states, as in Illinois and

Missouri, there is an option between the small board of county commissioners and the larger board of supervisors. There is, however, little difference in the powers of the two types of county boards; and the larger bodies are more unwieldy for administrative business. It may be noted that the small county boards are found in many of the states with town or township government, as Massachusetts, Pennsylvania, Ohio, and Indiana; as well as in the Southern and far Western states.

In a few states the powers of making appropriations and levying taxes have been placed in a body distinct from the county administrative board. Thus in Indiana, there was established (1899) for each county a county council of seven members for these purposes, in addition to the board of three county commissioners; and similar results have been secured in other ways in some of the smaller New England states.

A few states have taken some steps toward developing a chief executive for the county. In some New Jersey counties the chairman of the county board has special powers, similar to those of the president of the Cook County board of commissioners in Illinois. In Alabama the probate judge is ex-officio chairman of the county board, and exercises a larger influence than the other members. In Georgia, where there is no county board, the ordinary acts as probate judge and administrative officer, aided in some matters by the grand jury.

Rhode Island has only two county officers, the sheriff and clerk of court, both appointed by the legislature. The other New England states have about six officers in each county. All the other states have a more numerous list of elective county officers, largely independent of each other and of the county board. Some of these are to be found in most of the states; but in the case of others there is a good deal of variation in titles and functions.

The one office found in every county is the sheriff, now elected in all the states except Rhode Island; in every county there is also a court clerk, or a county clerk, who is usually secretary of the county board with other miscellaneous duties, but in a number of states (as in Ohio and Minnesota) the county auditor has important functions elsewhere vested in the county clerk. Nearly all the states have a system of local prosecuting officers, corresponding to the state's attorney in Illinois; and in most states this is an elective county officer. But the title varies a good deal, including such terms as prosecuting attorney, district attorney, solicitor and county attorney; and in a number of states (mainly in the South, but including also Massachusetts and Oregon), these officers usually act in judicial districts larger than a county.

County treasurers are provided in nearly all the states; but in Connecticut and Vermont these officers are appointed. In most states there is a county judge or probate judge in each county; New York and New Jersey have both of these officers in every county, and in some other states there are two officials in the larger counties, as in Illinois. Most states have county recorders,

or registers of deeds, and coroners;¹ and outside of New England there are usually county surveyors and county (or district) school commissioners. In addition to the clerk of the county court, there are frequently additional clerks for probate and circuit, district, or other courts. In the Southern states there is regularly a county assessor and tax collector; and in most of the middle Atlantic and North Central states there is a county assessing officer, or assessment functions are vested in the county clerk, treasurer, auditor, or other county officer.

In the states outside of New England there are county road commissioners or superintendents, and also poor commissioners or superintendents of the poor farm. These officers are usually appointed, but in a few states are elected. A good many states have appointed county health officers.

County officers are elected for terms varying from two to six years. In the states east of the Mississippi river, the terms of different officers often overlap each other. In the states west of the Mississippi a uniform term of two years is usual for all county officers.

In most counties the subordinate staff of county officers is small; but in the more populous counties with large cities, the number of deputies, clerks, and other employees is larger and of more importance. In most cases these positions are held at the pleasure of their superior officers; and are often subject to political patronage. In eighteen of the larger New York counties, several New Jersey counties, and a few isolated counties in other states, the merit system of civil service has been applied to some extent.

County home rule. Until after the beginning of the present century there was little public criticism of the general methods of county government, although not infrequently there were serious charges and scandals in particular counties. Criticism of the fee system, which had continued from early days, led in many states to the establishment of fixed salaries for county officers; but the fee system remains in force in many places.

Since about 1910, there has been a good deal of active discussion of county government and serious efforts have been made to secure important changes, notably in New York, New Jersey, California, and Ohio. But constitutional provisions requiring uniform legislation and prescribing a detailed list of elective county officers have prevented any far reaching changes, without amending the state constitution.

In California and Maryland a method of introducing new plans of county organization has been found by the recent adoption of constitutional amendments authorizing county home rule charters. Before this, in a few states where municipal home rule charters

¹ In Massachusetts and Maine coroners have been replaced by appointed medical examiners.

were authorized, there were special provisions for partially consolidated city and county government for certain large cities, such as St. Louis, San Francisco, and Denver. But the California amendment of 1911 and the Maryland home rule amendment of 1915 authorize any county to elect a charter board to frame a county charter, subject to approval by the electors.

The California amendment provides in detail the procedure for preparing a county charter and its contents; and further amendments to the constitution have since been adopted with special reference to conditions in Alameda county. Under the county home rule amendment four counties in California have framed and adopted local county charters: Los Angeles and San Bernardino counties in 1913, and Butte and Tehama counties in 1917. Under the Los Angeles county charter, the only elective county officers are five supervisors, sheriff, district attorney, assessor and justices of the peace. Other county officers are appointed by the supervisors, and constables are appointed by the sheriff, all from civil service lists. The San Bernardino charter provided for the consolidation of offices, and for the appointment of all other officers by the board of supervisors; but a charter amendment adopted in 1915 restored the elective system. In Butte and Tehama counties, offices have been consolidated.

No Maryland county has as yet adopted a charter; but the new Baltimore home rule charter provides for a partial consolidation of city and county offices.

A proposed constitutional amendment to authorize county home rule charters was introduced in the Ohio General Assembly at the session of 1919.

Towns and townships. Constitutional provisions on town and township government are comparatively limited. In about a third of the states there are provisions for the organization of townships by general law. These are mostly states in the middle west, but some are southern and far western states, where the township system has not been fully established, as North and South Carolina, California, Idaho, Utah, Washington, and Wyoming. A few states (Illinois, Missouri, Nebraska, and South Dakota) provide for an optional system of township government. On the other hand in the New England states, where towns are of most importance, and in the Middle Atlantic states, there is seldom any mention of them in the state constitutions.

In the states with constitutional provisions there are sometimes brief provisions about town officers; but in the main the organization and powers of towns and townships are regulated by statute law. Constitutional restrictions on municipal debt, and other general provisions as to public officers, frequently apply to towns and townships as well as other municipalities.

New England towns are the most important. Except in the unsettled parts of northern Maine and New Hampshire, the whole area

of each state is formed into towns and cities. The towns are irregular areas of from 20 to 30 square miles, including both rural territory and more compact village settlements. The greater importance of New England towns as compared with those in other parts of the country is due in part to the exercise of some functions elsewhere performed by county officers, but more to the fact that New England towns have substantially as extensive powers as cities and villages. In Connecticut, Maine, and Vermont some villages and boroughs (in Connecticut also cities) have been organized within towns, but this is exceptional. There are thus many towns which include urban communities of considerable size. In Massachusetts one town has a population of nearly 40,000.

The primary organ of town government in New England is the town meeting of legal voters. Annual town meetings are usually held in the spring, and special meetings at other times. These are formally summoned by warrant, with a statement of the business to be transacted. At these meetings a moderator is elected as chairman, town officers are elected, reports of officers are presented, and appropriations, taxes, and local by-laws are discussed and voted.

In the smaller towns there is usually a fair attendance of voters at the town meetings; and there is often active and interesting debate. But in the larger towns a full attendance is impossible, and the number present is often small; and the business is apt to be mainly a formal ratification of recommendations by town officers and committees. In some towns a committee on appropriations is selected beforehand to report on the annual budget.

There is a considerable number of town boards and other officials but no one chief executive officer. The most important officers are the selectmen (from three to nine), who act as a general administrative board. Most towns have also a school committee, board of health and overseers of the poor. Larger towns have also water, library, and park boards. Each town has also a town clerk, assessors, treasurer, constables, and often a considerable list of minor officials, such as pound keepers, fence viewers, etc. Most town officers serve without pay; but in the larger places paid officials have been introduced for the more important places.

The New England town remains an active agency of local government; and in small communities of native stock continues to give reasonable satisfaction. But in larger industrial towns, with many voters of new racial elements, it is not so successful. The combination of all branches of local government in one organization has distinct advantages over a series of independent local authorities. But there is need for a more active centralized control over the various boards and officials than can be exercised in a public town meeting under present day social conditions.

In the large group of northern and central states from New York and New Jersey westward to Kansas and the Dakotas, general systems of towns and townships have been established. In most of these states practically the entire area is divided into towns, except that cities (and sometimes villages) have absorbed the town government. In the older

easterly states of this group, the towns, like those of New England, are irregular in shape and vary a good deal in size. From Ohio westward the standard township is the geographical area of that name, approximately six miles square, originally formed as a surveying unit for the public lands ceded to the United States, and commonly known as the congressional township; but in many cases the boundaries of congressional townships do not coincide with those of the civil towns.

Such towns and townships in these central states are, however, of much less importance than the New England towns; and their importance is declining. This is partly due to the greater and increasing importance of county government; but is more largely the result of the separate organization of villages, boroughs, and cities, with their own local government for the special problems of these urban and semi-urban communities, leaving to the township only a few and mostly unimportant functions. Another factor has been the artificial and geometrical nature of the township area, and the lack of social unity or self-consciousness. Most of the towns have thus a small population, largely agricultural; but in a few states towns include cities of considerable population.

In Illinois and the Dakotas some counties are not organized under the township system (except for school purposes); and in Missouri and Nebraska less than a fourth of the counties have the township system. In Illinois and Indiana, and generally in Ohio and Nebraska, cities, and in most of the central states all villages, remain part of the township; but in most states cities are independent of the townships, and are vested with town functions, and this is also true of boroughs in New Jersey and Pennsylvania, and villages in Wisconsin, Minnesota, and the Dakotas.

For the government of these towns or townships, the state laws provide for town meetings of voters in the northerly tier of states—New York, New Jersey, Michigan, Illinois, Wisconsin, Minnesota, and the Dakotas. But as there is little to be done at these meetings except to elect town officers, the attendance at the business meetings in the great majority of towns is very slight; and the town meetings have none of the vitality or active interest shown in New England. In the southerly tier of states—Pennsylvania, Ohio, Indiana, Iowa, Kansas, and Missouri, there is no provision for town meetings, although there are of course town elections at which some questions are at times submitted to a referendum vote of the electors.

Two main types may be recognized in the organization of town officers. In Pennsylvania, Ohio, Iowa, Minnesota, and the Dakotas (the first three states with no town meetings), there is a town board or committee, somewhat similar to the New England selectmen (although that term is not used in any of these states.) In the other states there is a single principal officer of the town (though he does not have any definite authority over other elective town officers), assisted in some matters by a town board. In states with the large county boards of supervisors, the principal town officer is the supervisor, who is also a member of the county board. In Indiana, Missouri, Kansas, and Oklahoma (where there are small boards of county commissioners) the

principal town officer is called the township trustee. The statutory duties of the town supervisors and trustees vary in different states. In New York, Illinois, and Missouri they act as town treasurers; in Michigan, and Kansas as town assessors, besides having other functions. The town trustees in Indiana, besides having the usual duties, acts also as trustee for the school township.

Other elective town officers include clerks, treasurers, assessors, road commissioners, justices of the peace, constables, and occasionally one or two more; but few of the numerous boards and minor officials of the New England towns appear in the central states.

In most of the central states towns are further divided into school districts; and villages and cities are freely organized; while other special districts are frequently established. These will be noted in a later section of this chapter.

In the southern and far western states, counties are divided into precincts or districts for various purposes; and usually into several overlapping series of districts. In some cases these districts elect local officials, while in others they are merely convenient areas of administration; but except in the case of villages and cities and some special districts, such local districts are seldom incorporated. In a few states* (California and North Carolina) the term township has been applied to such districts.

Villages, boroughs, and cities. In the United States as a whole there are more than 10,000 incorporated municipalities variously styled incorporated towns, villages, boroughs, and cities. These are compactly settled communities, ranging from hamlets of a few hundred population to metropolitan cities such as Chicago and New York. Comparatively few village corporations have been formed in New England, as the town governments serve the needs of the village settlements; but elsewhere separate municipal organizations for even small villages are common.

No sharp distinction can be drawn between the different terms for such municipalities. In Kansas and some other states even the smallest municipalities are called cities. In other states the smaller places are called towns, villages, or boroughs; and the larger are called cities; but there is no uniformity as to the dividing line. In New York and Pennsylvania the minimum population for cities is 10,000; in other states this ranges from 5,000 (in Ohio, Virginia, and Louisiana), to 2,000 in a number of states, and to 250 in Kansas. The term borough is applied to the smaller municipalities in Connecticut, New Jersey and Pennsylvania.

Such municipalities are usually organized on petition (generally to a county officer) and a local popular vote; but in a few states they may be organized by the county board without a vote in the community affected. A change from a village to a city likewise, in most states, requires a local referendum; and in Massa-

chusetts all cities must be established by act of the state legislature.

The government of these municipalities necessarily shows wide variations. Villages and boroughs are usually organized under a general law in each state, by which there is a board of trustees or council (of from three to nine members), usually elected at large, with a president or mayor with some powers as chief executive. Usually there is also a clerk, treasurer, street commissioner, and chief police officer, and in many places assessors, attorneys, and other officers. The functions of villages generally include care of the streets, police, water supply, sanitation, and fire protection, the power to pass local ordinances, and often other municipal affairs.

For cities there is no general type of organization, even in a single state. In some states special charters and laws are still enacted for each city. In most states legislation on city government must be by general law; but by passing laws applying only to classes of cities or by optional laws, different forms of organization are provided for different cities. In thirteen states (mostly west of the Mississippi river, but including Michigan, Ohio, and Maryland), there are constitutional provisions authorizing cities (and in some states also villages) to frame and adopt home rule charters for their local government.

Amid the numerous diversities, three main types of organization may be distinguished. The most common is still that of a mayor and council (the latter usually elected by wards), with a varying number of administrative officials and boards, some elected and some appointed. In some of the eastern states and in Indiana the tendency in cities with this form since about 1880 has been to increase the powers of the mayor, and to centralize authority in his hands; but there are many qualifications and exceptions.

Since about 1900 two other more centralized types of municipal government have been introduced on a considerable scale. Several hundred cities and villages in all parts of the country have adopted the commission plan, under which the administrative powers of the municipal government are vested in a board, usually of five elected commissioners (sometimes three or seven). One member, elected as mayor, is chairman of the board, but he has little or no special power.

More recently the city manager plan has been adopted in a number of cities. This has usually been based on a small council elected at large, to determine general policies, and to select a trained city-manager, as the administrative head of the city government.

Under these later plans, however, the local courts and schools, and sometimes other functions, usually remain under elected officials, not under the control of the commission or city-manager.

Special districts. In addition to the more general local government units noted above, there has been a marked tendency in recent years in other states as well as in Illinois toward the creation of a great variety of other local districts for special purposes, with the result of further increasing the complexity of local government.

Early illustrations of such special districts are to be found in the precincts or districts established in the southern (and later in the far western) states where the township system was not introduced. Another early and much more widespread example is the school district, organized within towns and counties, as the primary unit of local school administration; and such school districts in many states have become more than administrative subdivisions, having their own taxing power and not infrequently being given the full legal status of a municipal corporation.

But the recent tendencies have multiplied the number and variety of such special districts to a great extent. Such special districts now include the following classes: drainage districts, in forty states; irrigation districts, flood control districts, reclamation districts, water districts, sanitary districts, local improvement districts, road districts, bridge districts, park districts, watch districts, fire and lighting districts, public health districts, and "rural communities"—the last named in North Carolina. In some cases the classification has been carried further, as in the case of water storage districts, or forest preserve districts.

Not all of these classes of special districts are to be found in any one state; and some kinds of districts are found mainly in certain geographical regions. Thus irrigation districts are mainly in the far western states; and fire, lighting, and watch districts are subdivisions of towns in some of the New England states. But the number of classes and the number of special districts in many States add materially to the list of local authorities.

Among the more important special districts outside of Illinois may be noted the metropolitan park district and the metropolitan water and sewerage district in eastern Massachusetts, including Boston and about 40 neighboring towns and cities; and the port of Portland (Oregon), originally created to improve the Columbia river, to which power has been added to control towage and pilotage, terminal facilities, and markets, and also authority to own and operate transportation lines from Portland to any point in the world.

The multiplication of such special districts not only adds to the complexity of local government in many states and in the United States as a whole; but such districts necessarily overlap and cover the same territory as the more general local units. Where a number of special districts are formed over much the same territory in addition to the usual county, town, city, and school district, the result is a confusion and chaos of local government similar to that in many parts of Illinois.

On the other hand may be noted instances where steps have been taken to combine overlapping local authorities into a unified system of local government. In many places, the powers and functions given elsewhere to special districts (such as sanitary or park districts) are vested in the city or other existing municipal authorities. As already noted in many states, city and township government, and in some states, village and township government are combined in one organization.² Less frequently local school administration in cities has been made a department of the city government.

In a number of the largest cities (such as New York, Philadelphia, Boston, Baltimore, St. Louis, Denver, and San Francisco), and for all cities in Virginia, city and county government have been partially (in Denver almost wholly) consolidated in one system.³

State supervision. Local selection of local officials is a highly developed feature of public administration in the United States; and is applied even in the case of officers whose duties are mainly to act as agents of the state government. In this respect the administrative system of the states contrasts sharply with that of the national government, where the local agents are all appointed by the central government.

But, beginning about the middle of the nineteenth century, there has been a gradual development of state supervision over the functions of local officials; and this tendency has increased in recent years, along with the expansion of the field of direct administration by state officials.

State supervision began and has been developed furthest in the field of public education. Laws requiring the establishment of public schools in all localities, and providing for state financial aid, have been followed by state supervision through state superintendents and state departments of education, perhaps most highly developed in the state of New York. State institutions of higher education have also been established in all of the states.

State supervision and direct state administration have also been established to a considerable extent in the fields of public charity, public health, public finance and public utilities. State boards or departments have been set up in these fields, at first in many cases with authority only to receive reports and conduct investigations; but larger powers of supervision and control have been added in most states. New York and Massachusetts have taken the lead in this development; but the other states have followed in varying degrees.

² Cities in New York, New Jersey, Pennsylvania, Michigan, Minnesota, Wisconsin and the Dakotas; boroughs and villages in New Jersey, Pennsylvania, Wisconsin, Minnesota and the Dakotas.

³ See Bulletin No. 11, on Local Governments in Chicago and Cook County.

Illinois has taken part in this movement to a considerable extent; and in most lines has reached about the same stage as the average of the important states, though in some cases (as in the establishment of a state tax commission) later than in other states. But in one field—the supervision of local finances—practically nothing has been done in Illinois. The situation in this field in other states may be briefly described.

As early as 1878 Minnesota established the office of state examiner with power to examine the accounts of county officers. A year later, Massachusetts provided for the supervision and inspection of county accounts, now exercised by the state controller of county accounts. In 1890 Wyoming established a more comprehensive supervision over local accounts; and this was soon followed by other neighboring states—Montana, the Dakotas, Nebraska, Kansas, and Nevada—and also by Florida. In 1892, New York authorized the state comptroller to audit certain accounts of county treasurers; and later provision was made for uniform financial reports from counties and cities.

In 1902 Ohio established a more thorough system of public accounting, auditing and reporting for every public office in the state, under the supervision of the auditor of state. Laws for uniform municipal accounts and reports have also been passed in Indiana, Iowa, Massachusetts, California, Wisconsin, and other states. About half of the states, including most of the larger states, have now provided in some measure for financial reports from local authorities to a state officer; and a considerable number have also provided for a state audit of local accounts.

This state supervision over local accounts has brought about a marked improvement in local financial methods. In Wyoming, in which only two counties had kept their expenses within their income, county expenditures were reduced and all were brought to a cash basis. In New York the examination of county accounts disclosed defalcations or shortages in 25 of the 60 counties. In Ohio large amounts have been saved by introducing better methods of accounting.

Under present conditions in Illinois, no comparison of local finances in different communities can be made because of the lack of official reports and the varying methods of local officials. There is no general system of auditing the accounts of local officers; and if discrepancies are discovered later, the only remedy is by suit against the officers, their bondsmen, or perhaps their heirs.

A committee of the General Assembly recommended in 1913 a law for a uniform system of county accounts and the audit of such accounts by a state officer, with optional provisions for other local authorities. But no action has as yet been taken for this purpose.

V. COMMENTS AND CONCLUSIONS.

Local areas. The provisions in sections 1 to 4 of Article X of the constitution of 1870, on the formation of new counties, and on changes in county boundaries and county seats, were adopted to restrict frequent changes and the creation of small counties which had been actively carried on in the period before 1848. Not only have these purposes been accomplished; but the existing provisions have entirely prevented the formation of new counties and changes in county boundaries, even where some modifications of existing boundaries, may be desirable.

The general principle of requiring local consent for the formation of new counties or changes in county lines and county seats will probably be continued; and a minimum limit on the size of new counties may be retained as a general rule. But exception may be made so as to permit large cities to be organized as counties; and consideration may be given to the question whether all of the details in the existing provisions are needed, and whether a briefer and simpler statement of the general principles may not be adequate.

At the same time, attention should be given to the effect of other constitutional provisions in promoting legislation for the multiplication of new types of local districts. Such districts have been formed in many cases as a means of evading the constitutional provisions for uniformity of taxation in each municipal corporation and imposing specific limitations on municipal debt. Such clauses in the present constitution may be eliminated or modified, so as to remove some of the factors which help to swell the number of overlapping local areas.

On the other hand, the constitutional convention may consider the desirability of some new provisions to authorize, and so far as may seem advisable, to promote, the union of all small counties and the consolidation of existing overlapping local districts into more comprehensive and simpler areas of local government.

Detailed provisions on county government. The detailed provisions for the local election of county officers were adopted for the purpose of extending the field of local control over such officers. But these provisions, as well as those relating to the compensation of local officers, now operate as restrictions both on the general assembly and on the local districts in adapting the machinery of local government to local needs and present conditions. Attention may be given to the question of relaxing these restrictions, so as to permit greater

freedom in the organization of local government, either by leaving the matter more largely to the general assembly, subject perhaps to local referendum (at least in cases of special legislation) or by provisions for local home rule.

In a number of states (including the New England states, Iowa and Wisconsin) there is little or nothing in the state constitution on county government, leaving the whole matter to the state legislature. In several other states (including Ohio and Minnesota) there are brief general provisions on county and township government, with no such detail as is found in the constitution of Illinois.

If, however, detailed provisions are retained in the constitution, attention should be given to modifications and adjustments of the present provisions. In the section relating to township organization, the requirements as to popular votes for the adoption and abolition of the township system should be made uniform; and greater flexibility should be permitted in the organization of local government. The requirement in section 6 that one county commissioner shall be elected each year, makes necessary an election in alternate years in counties under the county commissioner system for the sole purpose of electing one commissioner. Qualifications for county commissioners in Article VI, Section 17 should be in the article on county or local government.

A reduction in the list of elective county officers in section 8, should be considered; and special attention may be given to the omission of the coroner as a constitutional officer, as was done in the constitution of 1848. In several states, this office has been abolished. A longer term for the county judge may be proposed; the population limit for counties in which a recorder of deeds is provided may be harmonized with that for probate judges; and some provision for greater legislative power over the office of sheriff may be advisable, in view of judicial decisions as to the common law powers of this officer.¹

The provisions of sections 10 and 12 relating to the classification of counties for fixing fees and salaries of county officers should be carefully examined in the light of present conditions; and the question of fixing salary limits in the constitution should be considered,

The proviso at the end of section 10 prohibiting an increase or diminution of compensation should be combined with other provisions of the same kind into one general provision.

In connection with section 13, providing for semi-annual reports of fees and emoluments by county officers, the question should be considered whether this may not be construed as a limitation on more comprehensive financial reports, and whether provisions should be made for such reports and their audit by state authority.

The special provisions relating to Cook County, in sections 7 and 9, will require thorough examination and revision. Considerations and suggestions relating to this are presented in Bulletin No. 11 on Local Governments in Chicago and Cook County.

¹ Dahnke v. People, 168 Ill. 102 (1897); People v. Nellis, 249 Ill. 12 (1911).

Home rule. Constitutional provisions for municipal home rule charters for cities, and in some cases also for villages, have been adopted in thirteen states. The operation of these provisions and their applicability to Illinois has been discussed in Bulletin No. 6 on Municipal Home Rule; and the possible extension of such powers to include county government and the consolidation of local governments in Cook County have been set forth in Bulletin No. 11 on Local Governments in Chicago and Cook County. Attention may, however, be given to the question as to similar provisions for county home rule and the consolidation of local governments in other parts of the state.

As already noted, two states (California and Maryland) have recently adopted constitutional provisions for county home rule charters. In both of these states, the constitutional provisions contain a good deal of detail as to procedure. The California provisions also contain much more detail as to the content of county charters and as to county officers; and still further details have been added in a later amendment adopted to meet the special conditions in Alameda county. The result is to place in the state constitution a good deal of what would more properly be statutory legislation; and in the case of the later California amendment what is practically special legislation. Four counties in California have adopted home rule charters; but no county in Maryland has thus far exercised this power.

A shorter proposal for county home rule (although also including details of procedure) has been introduced in the Ohio general assembly, with additional provisions for the consolidation of local governments in counties including large cities. But this proposal makes no distinction between the powers of counties and those of cities under the municipal home rule provisions of that state.

In support of constitutional provisions for county home rule, it may be said that counties in Illinois (as in other states) differ so widely in size and population and the importance of their county and other local governments, that their detailed regulation by general law makes impossible a satisfactory organization in many localities; and that a locally framed and adopted system of organization will be more likely to be adapted to local conditions. On the other hand, it may be urged that county officers are to a large extent primarily local agents of the state government; and that they should, therefore, be under more direct state control than may be necessary in the case of cities and villages, which are to a large extent organs for distinctly local purposes. If, however, state authority over the state functions of county officers is adequately protected, local control over the organization of county officers would seem to be less open to objection than the present system of local election of such officers without adequate state supervision.

Three main types of counties may be recognized in Illinois. Most counties are mainly agricultural in character, with some villages and small cities; but even these vary to a considerable extent in area and population. In sharp contrast with these is the metropolitan county of Cook, with more than 2,500,000 population, mostly in the city of Chicago, but with 80 other cities and villages as well as several hundred other local authorities. An intermediate type is the counties contain-

ing one or more cities of considerable size ; and in which the urban population is a majority of the total population. These counties in turn present a number of variations in size and the distribution of population. Provisions for constitutional home rule would permit different plans of organization to be adopted, not only for the main types of counties, but also adapted to meet the different conditions within each type.

If a system of county home rule is considered, it will be advisable on the one hand to avoid detailed provisions such as those in the California constitution, and on the other hand to avoid the vagueness of the proposed Ohio provisions. If a detailed enumeration of county powers and duties in the constitution is to be avoided, it will be necessary to recognize clearly the authority of the general assembly to prescribe duties and to define the powers which must be provided for in home rule county charters. Provision may also be made by which, in connection with county home rule charters, the machinery of local government in any county may be more effectively co-ordinated and simplified. This may be done by authorizing the consolidation of local governments (for large city counties) or the adoption of a federated system, as has been proposed for Alameda county, California.

Proposals for county home rule are intended primarily to obtain systems of county government more readily adapted to the needs of counties of varying sizes and interests. The purpose to be accomplished may of course also be attained by omitting detailed regulations from the constitution, leaving to the general assembly wider power than at present to deal with the county problem, through laws generally applicable to all counties or by laws subject to a local referendum.

APPENDIX NO. 1. REFERENCES.

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APPENDIX NO. 2. ILLINOIS COUNTIES.

List of Illinois Counties with areas, population in 1910, and type of county government.

County.	Area Sq. Miles.	Population in 1910.	Form of County Organization.
Adams	842	64,588	Township organization.
Alexander	226	22,741	County commissioners.
Bond	388	17,075	Township organization.
Boone	293	15,481	Township organization.
Brown	297	10,397	Township organization.
Bureau	881	43,975	Township organization.
Calhoun	256	8,610	County commissioners.
Carroll	453	18,035	Township organization.
Cass	371	17,372	County commissioners.
Champaign	1,043	51,829	Township organization.
Christian	700	34,594	Township organization.
Clark	493	23,517	Township organization.
Clay	462	18,661	Township organization.
Clinton	483	22,832	Township organization.
Coles	525	34,517	Township organization.
Cook	933	2,405,233	Special Bd. County Commrs.
Crawford	453	26,281	Township organization.
Cumberland	353	14,281	Township organization.
DeKalb	638	33,457	Township organization.
DeWitt	415	18,906	Township organization.
Douglas	417	19,591	Township organization.
DuPage	345	33,432	Township organization.
Edgar	621	27,336	Township organization.
Edwards	238	10,049	County commissioners.
Effingham	511	20,055	Township organization.
Fayette	729	28,075	Township organization.
Ford	500	17,096	Township organization.
Franklin	445	25,943	Township organization.
Fulton	884	49,549	Township organization.
Gallatin	338	14,628	Township organization.
Greene	515	22,363	Township organization.
Grundy	433	24,162	Township organization.
Hamilton	455	18,227	Township organization.
Hancock	780	30,638	Township organization.
Hardin	185	7,015	County commissioners.
Henderson	376	9,724	Township organization.
Henry	824	41,736	Township organization.
Iroquois	1,121	35,543	Township organization.
Jackson	588	35,143	Township organization.
Jasper	508	18,157	Township organization.
Jefferson	603	29,111	Township organization.
Jersey	367	13,954	Township organization.
Jo Daviess	623	22,657	Township organization.
Johnson	348	14,331	County commissioners.
Kane	527	91,862	Township organization.
Kankakee	668	40,752	Township organization.
Kendall	324	10,777	Township organization.
Knox	711	46,159	Township organization.
Lake	455	55,058	Township organization.
La Salle	1,146	90,132	Township organization.
Lawrence	358	22,661	Township organization.
Lee	742	27,750	Township organization.
Livingston	1,043	40,465	Township organization.
Logan	617	30,216	Township organization.
McDonough	588	26,887	Township organization.
McHenry	620	32,509	Township organization.
McLean	1,191	68,008	Township organization.
Macon	585	54,186	Township organization.
Macoupin	860	50,685	Township organization.
Madison	737	89,847	Township organization.

Illinois Counties with areas, population and type of county government—Concluded.

County	Sq. Miles. in 1910.		Form of County Organization.
	Area	Population	
Marion	569	35,094	Township organization.
Marshall	396	15,679	Township organization.
Mason	555	17,377	Township organization.
Massac	240	14,200	County commissioners.
Menard	317	12,796	County commissioners.
Mercer	540	19,723	Township organization.
Monroe	389	13,508	County commissioners.
Montgomery	689	35,311	Township organization.
Morgan	576	34,420	County commissioners.
Moultrie	338	14,630	Township organization.
Ogle	756	27,864	Township organization.
Peoria	636	100,255	Township organization.
Perry	451	22,088	County commissioners.
Piatt	451	16,376	Township organization.
Pike	786	28,622	Township organization.
Pope	385	11,215	County commissioners.
Pulaski	190	15,650	County commissioners.
Putnam	173	7,561	Township organization.
Randolph	587	29,120	County commissioners.
Richland	357	15,970	Township organization.
Rock Island	424	70,404	Township organization.
St. Clair	663	119,870	Township organization.
Saline	399	30,204	Township organization.
Sangamon	876	91,024	Township organization.
Schuyler	432	14,852	Township organization.
Scott	249	10,067	County commissioners.
Shelby	772	31,693	Township organization.
Stark	290	10,098	Township organization.
Stephenson	559	36,821	Township organization.
Tazewell	647	34,027	Township organization.
Union	403	21,856	County commissioners.
Vermilion	921	77,996	Township organization.
Wabash	220	14,913	County commissioners.
Warren	546	23,313	Township organization.
Washington	561	18,759	Township organization.
Wayne	733	25,697	Township organization.
White	507	23,052	Township organization.
Whiteside	679	34,507	Township organization.
Will	844	84,371	Township organization.
Williamson	449	45,098	Township organization.
Winnebago	529	63,153	Township organization.
Woodford	528	20,506	Township organization.
Total	56,043	5,638,533	

APPENDIX NO. 3. CONSTITUTIONAL PROVISIONS.

1. Illinois constitution, Article X, Counties.

Section 1. No new county shall be formed or established by the General Assembly which will reduce the county or counties, or either of them, from which it shall be taken to less contents than four hundred square miles; nor shall any county be formed of less contents; nor shall any line thereof pass within less than ten miles of any county seat of the county or counties proposed to be divided.

Sec. 2. No county shall be divided, or have any part stricken therefrom without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

Sec. 3. There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added. But the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken.

Sec. 4. No county seat shall be removed until the point to which it is proposed to remove shall be fixed in pursuance of law, and three-fifths of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point; and no person shall vote on such question who has not resided in the county six months and in the election precinct ninety days next preceding such election. The question of the removal of a county seat shall not be oftener submitted than once in ten years to a vote of the people. But when an attempt is made to remove a county seat to a point nearer to the center of the county, then a majority vote shall be necessary.

Sec. 5. The General Assembly shall provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine; and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of the said county by the board of county commissioners, may be dispensed with, and the affairs of said county may be transacted in such manner as the General Assembly may provide. And in any county that shall have adopted a township organization, the question of continuing the same may be submitted to a vote of the electors of such county, at a general elec-

tion, in the manner that now is or may be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county; and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the State.

Sec. 6. At the first election of county judges under this constitution, there shall be elected in each of the counties in this State not under township organization, three officers, who shall be styled, "The Board of County Commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year, one for two years and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years.

Sec. 7. The county affairs of Cook County shall be managed by a board of commissioners of fifteen persons, ten of whom shall be elected from the city of Chicago and five from towns outside of said city, in such manner as may be provided by law.

Sec. 8. In each county there shall be elected the following county officers, at the general election to be held on the Tuesday after the first Monday in November, A. D. 1882: A county judge, county clerk, sheriff and treasurer, and at the election to be held on the Tuesday after the first Monday in November, A. D. 1884, a coroner and clerk of the circuit court (who may be *ex officio* recorder of deeds, except in counties having 60,000 and more inhabitants, in which counties a recorder of deeds shall be elected at the general election in 1884). Each of said officers shall enter upon the duties of his office, respectively, on the first Monday of December after his election, and they shall hold their respective offices for the term of four years, and until their successors are elected and qualified: Provided, that no person having once been elected to the office of sheriff or treasurer shall be eligible to re-election to said office for four years after the expiration of the term for which he shall have been elected.

Sec 9. The clerks of all courts of record, the treasurer, sheriff, coroner and recorder of deeds of Cook County, shall receive as their only compensation for their services, salaries to be fixed by law, which shall in no case be as much as the lawful compensation of a judge of the circuit court of said county and shall be paid respectively only out of the fees of the office actually collected. All fees, perquisites and emoluments (above the amount of said salaries) shall be paid into the county treasury. The number of the deputies and assistants of such officers shall be determined by rule of the circuit court, to be entered of record, and their compensation shall be determined by the county board.

Sec. 10. The county board, except as provided in section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other ex-

penses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; they shall not allow either of them more per annum than fifteen hundred dollars, in counties not exceeding twenty thousand inhabitants; two thousand dollars, in counties containing twenty thousand and not exceeding thirty thousand inhabitants; twenty-five hundred dollars, in counties containing thirty thousand and not exceeding fifty thousand inhabitants; three thousand dollars in counties containing fifty thousand and not exceeding seventy thousand inhabitants; thirty-five hundred dollars, in counties containing seventy thousand and not exceeding one hundred thousand inhabitants; and four thousand dollars, in counties containing over one hundred thousand, and not exceeding two hundred and fifty thousand inhabitants; and not more than one thousand dollars additional compensation for each additional one hundred thousand inhabitants: Provided, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the county treasury.

Sec. 11. The fees of township officers, and of each class of county officers, shall be uniform in the class of counties to which they respectively belong. The compensation herein provided for shall apply only to officers hereafter elected, but all fees established by special laws shall cease at the adoption of this constitution, and such officers shall receive only such fees as are provided by general law.

Sec. 12. All laws fixing the fees of State, county and township officers shall terminate with the terms respectively of those who may be in office at the meeting of the first General Assembly after the adoption of this Constitution; and the General Assembly shall, by general law, uniform in its operation, provide for and regulate the fees of said officers and their successors, so as to reduce the same to a reasonable compensation for services actually rendered. But the General Assembly may, by general law, classify the counties by population into not more than three classes and regulate the fees according to class. This article shall not be construed as depriving the General Assembly of the power to reduce the fees of existing officers.

Sec. 13. Every person who is elected or appointed to any office in this State, who shall be paid in whole or in part by fees, shall be required by law to make a semi-annual report, under oath, to some officer to be designated by law, of all his fees and emoluments.

2. Maryland constitution, amendment of 1915, Article XIA, Local Legislation.

Sec. 1. On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20 per cent of the registered voters of said city or any county (provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said city or county shall provide at the next general or Congressional elec-

tion, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said city or five registered voters in any such counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the city of Baltimore or the County Commissioners of such county, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than 5 per cent of the registered voters of the said City of Baltimore or said county; provided, that in any case two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the city of Baltimore or not more than five registered voters in any such county are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the city of Baltimore or five in such county shall constitute said charter board from and after the date of said election. At said election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall be void; but if such majority shall be in favor of the creation of said charter board, then and in that event the eleven nominees of the city of Baltimore or five members in the county receiving the largest number of votes shall constitute the charter board, and said charter board, or a majority thereof, shall prepare within six months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in said city of Baltimore or county within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said city or county at the next general or Congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of County Commissioners; and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption, the said charter from and after the thirtieth day from the date of such election shall become the law of said city or county, subject only to the Constitution and Public General Laws of this State, and any Public Local Laws inconsistent with the provisions of said charter and former charter of said city of Baltimore or county shall be thereby repealed.

Sec. 2. The General Assembly at its first session after the adoption of this amendment shall, by Public General Law, provide a grant of express powers for such county or counties as may thereafter form a charter under the provisions of this Article. Such express powers granted to the counties and the powers heretofore granted to the city

of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly.

Sec. 3. Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said city or county. Such legislative body in the city of Baltimore shall be known as the City Council of the city of Baltimore, and in any county shall be known as the County Council of the county. The chief executive officer, if any such charter shall provide for the election of such executive officer, or the presiding officer of said legislative body, if such charter shall not provide for the election of a chief executive officer, shall be known in the city of Baltimore as Mayor of Baltimore, and in any county as the President of the County Council of the county, and all references in the Constitution and laws of this State to the Mayor of Baltimore and City Council of the city of Baltimore and to the President and County Commissioners of the counties shall be construed to refer to the Mayor of Baltimore and City Council of the city of Baltimore and to the President and County Council herein provided for, whenever such construction would be reasonable. From and after the adoption of a charter by the city of Baltimore, or any county of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the city of Baltimore or the County Council of said county, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said city or county, including the power to repeal or amend Local Laws of said city or county enacted by the General Assembly, upon all matters covered by the express powers granted as above provided; provided, that nothing herein contained shall be construed to authorize or empower the County Council of any county in this State to enact laws or regulations for any incorporated town, village, or municipality in said county, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. Provided, however, that the charters of the various counties shall provide that the County Council of the counties shall not sit more than one month in each year for the purpose of enacting legislation for such counties, and all legislation shall be enacted during the month so designated for that purpose in the charter, and all laws and ordinances so enacted shall be published once a week for three successive weeks in at least one newspaper published in such counties, so that the taxpayers and citizens may have notice thereof. This provision shall not apply to Baltimore city. All such local laws enacted by the Mayor of Baltimore and City Council of the city of Baltimore or the Council of the counties, hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said Local Law and any Public General Law now or hereafter enacted, the Public General Law shall control.

Sec. 4. From and after the adoption of a charter under the provisions of this Article by the city of Baltimore or any county of this

State, no Public Local Law shall be enacted by the General Assembly for said city or county on any subject covered by the express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical sub-divisions of this State shall not be deemed a Local Law, within the meaning of this Act. The term "geographical sub-division" herein used shall be taken to mean the city of Baltimore or any of the counties of this State.

Sec. 5. Amendments to any charter adopted by the city of Baltimore or by any county of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of said city of Baltimore, or the Council of said county, or by a petition signed by not less than 20 per cent of the registered voters of said city or county, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition, and filed with the Mayor of Baltimore or the President of the County Council, and when so proposed shall be submitted to the voters of said city or county at the next general or Congressional election occurring after the passage of said resolution, or the filing of said petition; and if at said election the majority of the votes cast for and against said amendments shall be in favor thereof, said amendment shall be adopted and become a part of the charter of said city or county from and after the thirtieth day after said election. Said amendments shall be published by said Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to said election in at least one newspaper published in said city or county.

Sec. 6. The power heretofore conferred upon the General Assembly to prescribe the number, compensation, powers and duties of the County Commissioners in each county, and the power to make changes in Sections 1 to 6, inclusive, Article XI of this Constitution, when expressly granted as hereinbefore provided, are hereby transferred to the voters of each county and the voters of city of Baltimore, respectively, provided, that said powers so transferred shall be exercised only by the adoption or amendment of a charter as hereinbefore provided; and provided further, that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said counties or city as this Article sets forth.

Sec. 7. The word "Petition," as used in this Article, means one or more sheets written or printed or partly written and partly printed; "Signature" means the signature of a registered voter written by himself in his own handwriting (and not by his mark), together with the ward or district and precinct in which he is registered. The authenticity of such signatures and the fact that the persons so signing are registered voters shall be evidenced by the affidavit of one or more registered voters of the city or county in which said voters so signing are registered, and one affidavit may apply to or cover any number of signatures to such petition. The false signing of any name, or the signing of any fictitious name to said petition shall be forgery, and the making of any false affidavit in connection with said petition shall be perjury.

3. Michigan constitution, Article VIII, Local Government.

Sec. 1. Each organized county shall be a body corporate, with such powers and immunities as shall be established by law. All suits and proceedings by or against a county shall be in the name thereof.

Sec. 2. No organized county shall be reduced by the organization of new counties to less than sixteen townships as surveyed by the United States, unless in pursuance of law a majority of electors voting on the question in each county to be affected thereby shall so decide. When any city has attained a population of one hundred thousand inhabitants, the legislature may organize it into a separate county without reference to geographical extent, if a majority of the electors of such city and of the remainder of the county in which such city may be situated voting on the question shall each determine in favor of organizing said city into a separate county.

Sec. 3. There shall be elected biennially in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be prescribed by law. The board of supervisors in any county may unite the offices of county clerk and register of deeds in one office or separate the same at pleasure.

Sec. 4. The sheriff, county clerk, county treasurer, judge of probate and register of deeds shall hold their offices at the county seat.

Sec. 5. The sheriff shall hold no other office, and shall be incapable of holding the office of sheriff longer than four in any period of six years. He may be required by law to renew his security from time to time, and in default of giving such security, his office shall be deemed vacant. The county shall never be responsible for his acts.

Sec. 6. The legislature shall by general law provide for the appointment of a board of jury commissioners in each county; but such law shall not become operative in any county until a majority of the electors of the county voting thereon shall so decide.

Sec. 7. A board of supervisors, consisting of one from each organized township, shall be established in each county, with such powers as shall be prescribed by law. Cities shall have such representation in the boards of supervisors of the counties in which they are situated as may be provided by law.

Sec. 8. The legislature may by general law confer upon the boards of supervisors of the several counties such powers of a local, legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper.

Sec. 9. The boards of supervisors shall have exclusive power to fix the salaries and compensation of all county officials not otherwise provided for by law. The boards of supervisors, or in counties having county auditors, such auditors, shall adjust all claims against their respective counties; appeals may be taken from such decisions of the boards of supervisors or auditors to the circuit court in such manner as shall be prescribed by law.

Sec. 10. The board of supervisors of any county may in any one year levy a tax of one-tenth of one mill on the assessed valuation of

said county for the construction or repair of public buildings or bridges, or may borrow an equal sum for such purposes; and, in any county where the assessed valuation is less than ten million dollars, the board may levy a tax or borrow for such purposes to the amount of one thousand dollars; but no greater sum shall be raised for such purposes in any county in any one year, unless submitted to the electors of the county and approved by a majority of those voting thereon.

Sec. 11. Any county in this state, either separately or in conjunction with other counties, may appropriate money for the construction and maintenance or assistance of public and charitable hospitals, sanatoria or other institutions for the treatment of persons suffering from contagious or infectious diseases. Each county may also maintain an infirmary for the care and support of its indigent poor and unfortunate, and all county poor houses shall hereafter be designated and maintained as county infirmaries.

Sec. 12. No county shall incur any indebtedness which shall increase its total debt beyond 3 per cent of its assessed valuation, except counties having an assessed valuation of five million dollars or less, which counties may increase their total debt to 5 per cent of their assessed valuation. (As amended 1910).

Sec. 13. No county seat once established shall be removed until the place to which it is proposed to be removed shall be designated by two-thirds of the board of supervisors of the county, and a majority of the electors voting thereon shall have voted in favor of the proposed location, in such manner as shall be prescribed by law.

Sec. 14. No navigable stream of this state shall be either bridged or dammed without permission granted by the board of supervisors of the county under the provisions of law, which permission shall be subject to such reasonable compensation and other conditions as may seem best suited to safeguard the rights and interest of the county and the municipalities therein. No such law shall preclude the state from improving the navigation of any such stream, nor prejudice the right of individuals to the free navigation thereof.

Sec. 15. The board of supervisors of each organized county may organize and consolidate townships under such restrictions and limitations as shall be prescribed by law.

Sec. 15a. Any drainage district, established under provision of law, may issue bonds for drainage purposes within such district. (Amendment of 1917.)

Sec. 16. Each organized township shall be a body corporate, with such powers and immunities as shall be prescribed by law. All suits and proceedings by or against a township shall be in the name thereof.

Sec. 17. The legislature may by general law confer upon organized townships such powers of a local, legislative and administrative character, not inconsistent with the provisions of this constitution, as it may deem proper.

Sec. 18. There shall be elected annually on the first Monday of April in each organized township one supervisor, one township clerk, one commissioner of highways, one township treasurer, not to exceed

four constables and one overseer of highways for each highways district, whose powers and duties shall be prescribed by law.

Sec. 19. No township shall grant any public utility franchise which is not subject to revocation at the will of the township, unless such proposition shall have first received the affirmative vote of a majority of the electors of such township voting thereon at a regular or special election.

Sec. 20. The legislature shall provide by a general law for the incorporation of cities, and by a general law for the incorporation of villages; such general laws shall limit their rate of taxation for municipal purposes, and restrict their powers of borrowing money and contracting debts.

Sec. 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general laws of this state. (As amended 1912.)

Sec. 22. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety.

Sec. 23. Subject to the provisions of this constitution, any city or village may acquire, own and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power and transportation to the municipality and the inhabitants thereof; and may also sell and deliver water, heat, power and light without its corporate limits to an amount not to exceed 25 per cent of that furnished by it within the corporate limits; and may operate transportation lines without the municipality within such limits as may be prescribed by law; Provided, That the right to own or operate transportation facilities shall not extend to any city or village of less than 25,000 inhabitants.

Sec. 24. When a city or village is authorized to acquire or operate any public utility, it may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law: Provided, That such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such city or village but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

Sec. 25. No city or village shall have power to abridge the right of elective franchise, to loan its credit, nor to assess, levy or collect any tax or assessment for other than a public purpose. Nor shall any city or village acquire any public utility or grant any public utility franchise which is not subject to revocation at the will of the city or vil-

lage, unless such proposition shall have first received the affirmative vote of three-fifths of the electors of such city or village voting thereon at a regular or special municipal election; and upon such proposition women taxpayers having the qualifications of male electors shall be entitled to vote.

Sec. 26. The legislature may by general law provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by the state and by the counties and townships thereof and by road districts; and may authorize counties or districts to take charge and control of any highway within their limits for such purposes. The legislature may also by general law prescribe the powers and duties of boards of supervisors in relation to highways, bridges and culverts; may provide for county and district road commissioners to be appointed or elected, with such powers and duties as may be prescribed by law; and may change and abolish the powers and duties of township commissioners and overseers of highways. The legislature may provide by law for submitting the question of adopting the county road system to the electors of the counties, and such road system shall not go into operation in any county until approved by a majority of the electors thereof voting thereon. The tax raised for road purposes by counties shall not exceed in any one year five dollars upon each one thousand dollars of assessed valuation for the preceding year. (As amended 1917.)

Sec. 27. The legislature shall not vacate nor alter any road laid out by commissioners of highways, or any street, alley or public ground in any city or village or in any recorded town plat.

Sec. 28. No person, partnership, association or corporation operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any city, village or township for wires, poles, pipes, tracks or conduits, without the consent of the duly constituted authorities of such city, village or township; nor to transact a local business therein without first obtaining a franchise therefor from such city, village or township. The right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is hereby reserved to such cities, villages and townships.

Sec. 29. No franchise or license shall be granted by any municipality of this state for a longer period than thirty years.

4. Minnesota constitution, Article XI, Counties and Townships.

Sec. 1. The legislature may from time to time establish and organize new counties; but no new county shall contain less than four hundred square miles; or shall any county be reduced below that amount; and all laws changing county lines in counties already organized, or for removing county seats, shall, before taking effect, be submitted to the electors of the county or counties to be affected thereby, at the next general election after the passage thereof, and be

adopted by a majority of such electors. Counties now established may be enlarged, but not reduced below four hundred (400) square miles.

Sec. 2. The legislature may organize any city into a separate county, when it has attained a population of 20,000 inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

Sec. 3. Laws may be passed providing for the organization for municipal and other town purposes, of any congressional or fractional townships in the several counties in the State, provided that when a township is divided by county lines or does not contain one hundred inhabitants, it may be attached to one or more adjoining townships or parts of townships for the purposes aforesaid.

Sec. 4. Provisions shall be made by law for the election of such county or township officers as may be necessary.

Sec. 5. Any county and township organization shall have such powers of local taxation as may be prescribed by law.

Sec. 6. No money shall be drawn from any county or township treasury except by authority of law.

Sec. 7. That the county of Manomin is hereby abolished, and that the territory heretofore comprising the same shall constitute and be a part of the county of Anoka.

5. Ohio constitution, Article X, County and Township Organization.

Sec. 1. The General Assembly shall provide, by law, for the election of such county and township officers as may be necessary.

Sec. 2. County officers shall be elected on the first Tuesday after the first Monday in November, by the electors of each county in such manner, and for such term, not exceeding three years, as may be provided by law. (As amended 1885.)

Sec. 3. No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years.

Sec. 4. Township officers shall be elected by the electors of each township, at such time, in such manner, and for such term, not exceeding three years, as may be provided by law; but shall hold their offices until their successors are elected and qualified. (As amended 1885.)

Sec. 5. No money shall be drawn from any county or township treasury, except by authority of law.

Sec. 6. Justices of the peace, and county and township officers, may be removed, in such manner and for such cause, as shall be prescribed by law.

Sec. 7. The commissioners of counties, the trustees of townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law.

6. Proposed Ohio county home rule amendment.

Art. 19, Sec. 1. Any county may frame and adopt or amend a charter for its government and may exercise thereunder all powers of local self-government, and shall have authority to adopt and enforce within its limits such local police, sanitary and other similar regulations as are not in conflict with laws of general application in the State. The General Assembly shall pass no general laws of special application, and no special laws for specific counties.

Sec. 2. Any county with a population of over 200,000 may provide by charter for the abolition of any or all existing governments within said county. It may provide by charter in place thereof, a unified government over the entire county, which charter shall provide for the establishment of such local districts or boroughs for administrative and self-governing purposes, or for assessment and taxation purposes or for both, as it may deem convenient and equitable. Any single government thus established shall have the powers and privileges granted to municipalities and counties under the Constitution.

Sec. 3. Any county framing its own charter under the provisions of this Article may determine for itself what officers shall be chosen by election and for what terms and under what limitations, and Article 10 of the Constitution shall be so construed in a charter county. Such charter shall provide that the powers heretofore exercised by the county officers for and on behalf of the State shall be exercised by such officers as shall be designated therefor in such charter.

Sec. 4. When a petition requesting that the question "Shall a commission be chosen to frame a charter," or the question "Shall a commission be chosen to frame a charter providing a single unified government," be submitted to the voters, signed by 10 per cent of the qualified electors of the county, is filed with the Deputy State Supervisor of Elections, he shall order an election upon the question within ninety days. The ballots shall bear no party designation. Provision shall be made thereon for the election from the county at large of 15 electors who shall constitute a commission to frame a charter. Provided, however, that not more than nine of the electors so chosen shall be residents of any one of the cities, villages or townships within the county at the time of such election. Names of candidates for the charter commission shall be placed upon the ballot by petitions filed with the Deputy State Supervisor of Elections not later than twenty days before the election of such commissioners. No petition shall be deemed sufficient unless it bears the signatures of at least 1 per cent of the qualified electors of the county. If a majority of the electors voting on the question shall vote in the affirmative the Secretary of State shall within ten days after the receipt of the returns of the election officially declare and make a matter of public record that "County has elected to frame its own charter under Article 19 of the Constitution and has elected the following named persons to frame a charter for said county."

Upon this declaration by the Secretary of State any charter commission chosen under the provisions of this section shall immediately

be called together by the member whose name appears first in alphabetical order. The commission shall organize in such fashion as shall seem wise and expedient and proceed to frame a budget to cover the expenses which may be contracted for secretarial and necessary incidental purposes. This budget shall be presented to the county commissioners and they shall then appropriate out of the general funds of the County an amount sufficient to meet the necessary expenses of the Commission. The County Commissioners shall also provide the Charter Commission with necessary quarters and general facilities for their labors.

The charter as framed by the Commission shall be submitted to the voters of the County at an election to be held at a time fixed by the Charter Commission and within one year from the date of its election. Provision for said charter election shall be made by the Deputy State Supervisor of Elections in conformity with the laws governing the holding of elections and the Board of County Commissioners shall appropriate out of the general funds of said County a sum sufficient to pay the expenses of such election. Not less than thirty days prior to such election the Deputy State Supervisor of Elections shall mail a copy of the proposed charter to each elector whose name appears upon the poll books of the last regular election held within the County. If such proposed charter is approved by a majority of the electors voting at the election thereon it shall become the charter of the county at the time fixed therein.

Provision shall be made in the schedule of any such charter for such lengthening of the terms of elected public officials so that on a given date the terms of all such officers shall legally end and the officials chosen under the charter provisions shall take their place.

CONSTITUTIONAL CONVENTION

BULLETIN No. 13

Farm Tenancy and Rural Credits



Compiled and Published by the
LEGISLATIVE REFERENCE BUREAU
Springfield, Illinois

LEGISLATIVE REFERENCE BUREAU.

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I. SUMMARY.

The provisions of the present state constitution directly involved in the problems of farm tenancy and rural credits include:

Art. 4, Sec. 20. Prohibiting the state from loaning its credit.

Art. 11, Sec. 5. Forbidding the state to engage in banking.

Art. 9, Sec. 1. Requiring taxation to be uniform.

The restrictions as to banking activities of the state and the loaning of the state's credit read as follows:

Art. IV, Sec. 20. "The state shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association, or individual"; and:

Art. XI, Sec. 5. . . . "nor shall the state own or be liable for any stock in any corporation or joint stock company or association for banking purposes now created, or to be hereafter created."

These limitations have prevented the organization of cooperative credit associations backed by the credit of the state. Whatever organizations have been created under the authority of the state to meet farm loan needs in Illinois have been fostered by private capital.

The section requiring taxation to be uniform reads:

Art. IX, Sec. 1. "The General Assembly shall provide such revenue as may be needed by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property . . . in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

This limitation stands in the way of a graduated land tax on large holdings, a system of taxation that has been advocated as a means of breaking up large estates. Those who favor this method of taxation urge that it would have a tendency to discourage the holding of land for speculative or tenancy purposes, and so bring about the condition they desire—the farming land of the state owned by those who cultivate it.

While the aim of a graduated tax is to limit the amount of land that can be held by a non-operating owner, the purpose of farm loan systems is to furnish positive help to actual farmers in securing small farms.

The problem in rural credits is how to develop measures that will bring together the person who has money to lend and the young farmer who wishes to establish a home. The credit systems so far developed

have generally made provision for cooperative farm loan associations and land banks, supplementing each other in such a way that the land banks may make the loans to the borrowers and issue their bonds or debentures to the investors. In this way the land bank serves as an intermediary between those who desire to borrow and those who desire to lend on security based on agricultural land.

The various systems of rural credits may be grouped under first mortgage systems, second mortgage systems and systems for short time credits.

The federal rural credit system is a first mortgage system exclusively; it functions through the instrumentality of the national farm loan associations, (or in their absence through duly authorized agents) the federal land banks and joint stock land banks. These various agencies are organized in such a way that each farmer who becomes a member of a farm loan association may receive the benefit of the combined credit of all its members to the extent of the capital contributed and the limited liability they each incur. The federal system operates exclusively on the amortization plan.

The federal farm loan system was enacted after a thorough consideration of the various foreign systems of rural credits, and the first mortgage plan was adopted on the theory that the land mortgage bonds must be carefully secured so that they might have a ready sale throughout the country.

It has been urged that a system based on second mortgages could be advantageously developed within the limits of a single state where land values are high and conditions are stable, but most of the states so far have duplicated the federal plan, although it is urged that a large field for second mortgages remains unoccupied.

A system of short time credits in the form of personal credit cooperative unions has been proposed in order to supply credit for cooperative marketing organizations. Cooperative selling systems as well as plans for cooperative buying on the part of the farmer might be developed under a well devised system of personal credit unions under the supervision of the state.

Those who advocate the establishment of a state rural credit system claim that neither the federal system of rural credits nor the private agencies within the state are adequate to meet the situation in Illinois.

On the one hand it is urged that the state system could be operated to advantage in competition with the federal system: on the other hand it has been suggested that a system based on second mortgages would be more advantageous, as such a system could supplement the federal first mortgage system.

How may the farm loan needs of the state of Illinois be most advantageously met? What are the relative merits of the several rural credit systems so far developed, and does the experience of other states and other countries offer any suggestions for the farm loan situation in this state?

The constitutional provisions and legislative measures presented in the following pages may furnish some data toward a solution of the problems under consideration.

II. FARM TENANCY AND ABSENTEE LANDLORDISM.

Farm tenures in Illinois. The proportion of farm tenants to farm owners has shown a steady increase in Illinois for some forty years.

The United States census for 1880 gave some attention to questions of land ownership and farm tenancy in the different states and the data collected at that time gave a higher percentage of tenants in Illinois than in any other northern state. Succeeding census reports left Illinois in the same relative position, showing a higher percentage of tenant farmers than any other state in this section of the United States.

In 1880 there were 23 tenants for every 100 farmers in the United States. In 1910 this percentage had increased to 37.1 per cent for the entire country.

In Illinois the proportion of tenants reached 31.4 per cent in 1880, and 41.4 per cent in 1910. At the present time conservative estimates place the number of tenants above 60 per cent for the entire state; and from 60 to 80 per cent for the rich lands in the corn belt. The most conservative estimates indicate that more than half the farmers of Illinois do not own the farms they cultivate.

When the proportion of tenant farmers exceeds 25 or 30 per cent under agricultural conditions in the northern states, there is occasion for inquiry. Where not more than one-fourth of the farmers are tenants, tenancy may merely represent the stage between agricultural labor and farm ownership. In many cases tenants are relatives of the owner, or the owner is a retired farmer who rents to some young farmer who is accumulating capital in order to purchase the farm later on. Under these conditions the average time spent as a tenant is about ten years and the average owner becomes an owner at about 35 years.¹

Where tenancy represents merely a brief transition stage, from which the agricultural laborer or young farmer becomes the owner of the land he cultivates whenever he shows normal thrift and industry, there seems to be little cause for apprehension; but where tenancy becomes the average condition of farm life, the interests of the commonwealth are involved. Scientific investigation and common observation seem to unite in the charge that tenant farming results in smaller crops, in declining fertility of the soil, and in a lower standard of social welfare, wherever it becomes the dominant method of agriculture.

Various measures have been proposed to meet the growing problem of farm tenancy. Those most commonly urged include: 1. A state land settlement commission; 2. A graduated land tax with pro-

¹ See reference list for investigations made by Dr. B. F. Hibbard of the University of Wisconsin, and by Professor G. F. Warren of Cornell University.

gressive rates: (a) varying according to size of holding, and (b) with increased rates for owners who do not operate the land; 3. Inheritance tax with progressive rate for large holdings; 4. Equalization of taxes as between used and unused land; 5. Definite limit on amount any person may own; 6. Direct purchase and sale of land by government; 7. Provision for alternative investments.

State land settlement commissions are helping solve the tenancy problem in a number of states. Measures enacted in Maine, Oregon, and Arizona are typical of similar measures in force in different sections of the country.

The constitutional provision that taxation shall be uniform (Art. 9, Sec. 1) at the present time stands in the way of most of the measures urged for graduated taxes on large land holdings.

Section 1 provides that, "The General Assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property . . . in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

The principle of progressive taxation is well established in this country in the income tax and the inheritance tax laws. It has been proposed that this principle be applied in taxing large land holdings.

Advocates of this plan propose that the smaller farms be entirely exempt from any graduated tax and that the sur tax should not begin to operate on any holdings not in excess of 640 acres. Others have suggested that the size of the holdings exempted should be placed as low as 480 or even 320 acres. On the other hand it has been urged that so small a holding should not be subject to the tax, as the general nature of agriculture in Illinois requires a farm varying from 80 to 320 acres to support a single family.

Others have proposed that a sur tax of 20 per cent be placed on all holdings over 640 acres, and that the rate of progression for farms over twice that amount should increase rapidly until the rate for large estates, such as the Scully estate, would become practically prohibitive. Such a provision would undoubtedly result in the reduction of many large estates into small sized farms.

A further proposition has been made to increase the rates for owners of large holdings who do not operate the land. It is urged that such a classification, based on the nature and use of the property, would not meet the constitutional objections urged against most of the proposals for breaking up large holdings.

It has also been urged that the principle of the graduated land tax be extended so as to be used in connection with the inheritance tax law. Undoubtedly many owners of large estates would elect to escape such a tax by disposing of part of their land in advance. If the rate of progression for the inheritance tax on large holdings were made higher than the rate for the graduated tax on land holdings it would result in giving a flexible margin to holdings. Under this proposal a large family, cultivating extensive lands, as a unit, would not feel

the weight of the graduated tax to such a great extent until the transfer of the holdings through inheritance.

The equalization of taxes as between used and unused land has further been proposed. This method of taxation is also prohibited at the present time by the Constitutional restriction as to uniformity.

Placing a definite limit on the amount which any person may own is another proposal sometimes urged. This method has been tried with some success in New Zealand. In general, the plan aims at the same result which would be secured under a graduated tax on large holdings, and it has been urged that a graduated tax would be more in keeping with the spirit of our laws and institutions.

A system which substitutes direct action on the part of the government in the purchase and sale of land to settlers has been effectively tried in a number of countries. In New Zealand this system has been advantageously operated in securing the settlement of the land by small holders. The government in New Zealand buys the land outright and sells it to small holders at the price paid. Provision is made for a low rate of interest and easy terms of payment. This system has been particularly useful in cases where the state desires to break up large holdings and estates into small farms owned and operated by farmers living on the land.

California has provided a land fund through which the state buys land in large holdings and resells it to small farmers on easy payments. This particular state found this method advantageous in the development of its small fruit farms.

It has further been urged that provision be made for alternative investments, so that funds now going into land investments might be turned into other channels.

This demand has been partially met by federal and state farm loan bonds. The first mortgage land bonds issued under the authority of the Federal Farm Loan Board, have opened a wide field to investors who have heretofore bought land as the only safe investment with which they were familiar. Since these bonds offer perfect security and a fair rate of interest, together with opportunity for long time investments, they will have a tendency to influence many investors against the accumulation of land. On the one hand this will result in land being offered for sale, and on the other hand it will withdraw a large group of land buyers. Giving small investors such alternative opportunities to invest their savings, would accordingly open a large amount of land to actual farmers.

Unless some positive action of this sort is brought to bear upon non-operating holders of land, the price of land in Illinois is likely to advance far beyond the value of its producing power. Even at the present time the effectiveness of a farm loan system in meeting the tenancy problem is largely discounted by the high cost of land.

Absentee landlordism in Illinois. The problem of absentee landlordism has been aggravated in the state of Illinois by a number of great non-resident holdings like the Scully estate.

Measures most frequently urged to meet the problems of absentee landlordism include: 1. Laws prohibiting the ownership of land by aliens; 2. A higher tax rate for non-residents.

Laws making it illegal for an alien to own land within a state have been enacted in a number of states. However, such laws have usually been circumvented by the acquisition of citizenship papers and fictitious residence in this country; such aliens becoming naturalized simply on account of the prohibition against alien ownership of farm land. There is the further difficulty that such a provision might be held objectionable under the federal constitution.

The proposal to tax citizens at different rates according as they are resident or non-residents within the state might also be objectionable under the federal constitution as being contrary to inter-state comity.

The purpose of both of these proposals is, of course, to break up large holdings for the use of actual farmers, who will own and operate the land upon which they live. It has been pointed out that this purpose could be just as readily secured under a graduated land tax; and that a classification as between operators and non-operators of agricultural lands could be made by any state without being objectionable under the federal constitution.

Under such a classification, land held for speculative purposes or large holdings held for occupation by tenants, could be taxed at a higher rate than land which is operated and improved by the owner.

III. SYSTEMS OF RURAL CREDITS: FIRST MORTGAGE SYSTEMS: FEDERAL FARM LOANS.

Since the enactment of the Federal Farm Loan Act July 17, 1916, a considerable number of National Farm Loan Associations have been organized within this State. By October 31, 1919, a total of 1,768 loans, aggregating \$6,841,475.00 had been placed on Illinois farm lands through these Federal cooperative associations. The total for the entire United States, on the same date showed 103,672 separate loans aggregating \$271,317,816.00. The total number of loans and aggregate amounts for states contiguous to Illinois for the same period were as follows: Indiana 2,440 loans and \$8,234,700.00; Michigan 2,802 loans and \$5,093,200.00; Wisconsin 1,884 loans and \$4,455,800.00; Minnesota 3,256 loans and \$9,921,100.00; Iowa 2,522 loans and \$17,766,350.00; Missouri 2,682 loans and \$7,223,050.00; and Kentucky 1,442 loans and \$3,691,200.00. Contrasted with these Delaware had only 12 loans in all aggregating \$24,500.00, the smallest number as well as the smallest aggregate for any State, while Texas had the largest number of loans as well as the largest aggregate for the same period amounting to 10,643 loans with an aggregate of \$29,999,156.00.

The Joint Stock Land Banks, also provided for in the Federal act made additional farm loans amounting to \$47,633,775.83 for the entire United States. Adding this amount to the total loans made through the Farm Loan Associations for the entire country, gives a sum total of \$318,951,591.83 placed on farm loans under the Federal Farm Loan Board in a period slightly more than three years since it was established.

The present federal farm loan act is distinctly limited to first mortgage loans. Such loans involve little risk and therefore permit a low rate of interest and provide a safe basis for the issue of the farm loan bonds. The amortization plan of the federal law further tends to lower the amount of interest actually paid, and this process of paying off the indebtedness by installment payments of a fixed amount, which includes interest and a part of the principal, throughout a period of years, thus provides a regular source of capital for the payment of the farm loan bonds.

Briefly summarized, the purpose of the federal farm loan act is to provide capital for agricultural development and to create standard forms of investment based upon farm mortgages; or more specifically, as summarized by the Federal Farm Loan Board, "To lower and equalize interest rates on first mortgage farm loans; to provide long term loans with the privilege of repayment in installments through a long or short period of years, at the borrower's option; to assemble the farm

credits of the nation, to be used as security for money to be employed in farm development; to stimulate cooperative action among farmers; to make it easier for the landless to get land; and to provide safe and sound long-term investments for the thrifty."

The entire system of farm loans under the Federal Farm Loan Board involves two methods of cooperative action: first, cooperative associations of borrowers, operating by means of the farm loan associations and the 12 federal land banks; second, cooperative associations of lenders, operating through the joint stock land banks.

National Farm Loan Associations.

The national farm loan associations are organized and controlled by the borrowers: each is made up of 10 or more farmers and it is through these local units that the borrower enters into the benefits of the system. These cooperative units furnish the machinery for borrowing and investing, for voting, and for protection against loss.

A national farm loan association may be formed by persons desiring to borrow money on farm mortgage security by entering into articles of association under the farm loan act. Membership in an association is limited to natural persons who are actual farmers and who are the owners, or about to become owners of farm land. This includes prospective farmers, tenants, or farm laborers who are about to purchase land. The prospective borrowers hold an organization meeting and elect from their members a board of five or more directors, and this board elects a loan committee of three, a president, vice president, and a secretary-treasurer, who is a bonded officer. The secretary-treasurer may or may not be a member of the association. These prospective borrowers, 10 or more in number, then make application in writing to the federal land bank of the district for loans to the aggregate amount of \$20,000 and for a charter to do business. They must sign and acknowledge articles of association and forward them to the federal land bank. The federal land bank then sends its appraiser to inspect the land offered as security for the loans applied for, and, if satisfactory, the loans are authorized when the charter is granted to the association. The bank then advances the money through the secretary-treasurer of the local association. In the application signed by borrowers each must indicate how much money he desires and must list the value of the land to be mortgaged as security; but no person may borrow more than \$10,000 nor less than \$100, and in no case may the loan exceed 50 per cent of the value of the land mortgaged, and 20 per cent of the value of the permanent insured improvements.

Upon the granting of the charter the individuals signing the application become a body corporate, and the farm loan association thus organized has the right to do the business authorized by the farm loan act and to have succession indefinitely. When once organized it may take in new members from time to time and thus serve an entire community continuously.

Whenever any national farm loan association desires to secure a loan on first mortgage for any of its members from the federal land bank of its district, it is required to subscribe for capital stock of the land bank to the amount of 5 per cent of such loan; this subscription is to be paid in cash upon the granting of the loan by the land bank. Such capital stock is to be held by the land bank as collateral security for the payment of the loan, but any dividends accruing and payable on such capital stock while it is outstanding are to be paid to the farm loan association. Such stock may be paid off at par and retired in the discretion of the directors of the association and with the approval of the Federal Farm Loan Board, and the stock must be paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association is required to pay off at par and to retire the corresponding shares of its stock which were issued when the land bank stock was issued. The capital stock of the federal land bank may not be reduced to less than 5 per cent of outstanding farm loan bonds issued by it.

Any person whose application for membership is accepted by a loan association is entitled to borrow when funds are available unless the federal land bank of the district or the farm loan board determine otherwise. Any borrower may, at his option, pay for his stock from the proceeds of the loan, provided the total amount of the loan does not exceed the maximum limit of \$10,000. Any sum thus borrowed from the federal land bank through the association is to be made a part of the face of the loan and paid off in amortization payments.

Subject to rules and regulations prescribed by the Federal Farm Loan Board, any loan association is entitled to retain a commission not exceeding one-eighth of one per cent semi-annually from each interest payment upon the unpaid principal of any loan indorsed by it. Any amounts so retained as commissions are to be deducted from dividends payable to the federal farm loan association by the federal land bank. Any loan association may make application to the federal land bank of the district for loans not exceeding in the aggregate one-fourth of its total stock holdings in the bank. The land banks have the power to make such loans and to charge interest not exceeding 6 per cent per annum.

Shareholders of every loan association are held individually liable, equally and ratably, and not one for another, to the extent of the par value of the stock owned by them, in addition to the amount paid in and represented by their shares.

After a charter has been granted, any natural person owning, or about to own qualified land, may become a member of an association upon approval of the directors and upon subscribing to stock to the extent of five per cent of his proposed loan.

Whenever an application for a mortgage loan is made to a loan association it must be referred to its loan committee. This committee examines the land, makes an appraisal and a detailed written report, and no loan may be approved by the directors of the loan association unless the committee's report is favorable. The written report and approval of the loan committee are then submitted to the directors of the land

bank, together with the application for the loan. The land bank is required to refer the application and the report to the land bank appraiser for investigation, and no loan may be made by the bank unless the written report of the appraiser is favorable. Land bank appraisers are required to make such examinations and appraisals and conduct such investigations concerning farm loan bonds, and first mortgages as the Federal Farm Loan Board may direct.

Capital stock of national farm loan associations. The shares in national farm loan associations have a par value of \$5.00 each. Each shareholder is entitled to one vote on each share of stock held by him at all elections of directors and in deciding all questions at meetings of shareholders, but the maximum number of votes which may be cast by any one shareholder is limited to 20. It is evident that this limitation on voting power places all members who borrow more than \$2,000 on an equality of voting strength, regardless of any larger loans which they may carry.

Only borrowers on farm land mortgages are permitted to be members or shareholders in the loan associations. Every applicant for a loan must apply for membership and subscribe to stock in the association to the extent of 5 per cent of the desired loan, and this subscription must be paid in cash upon the granting of the loan. If the application for membership is accepted, the loan granted, and the stock paid for, the applicant becomes the owner of one \$5 share of capital stock in the loan association for each \$100 of the face of his loan or any major fraction thereof. Upon full payment of the loan such capital stock is retired; meanwhile it is held as collateral security by the association, but the borrower receives any dividends accruing and payable while it is outstanding. The amount of capital stock is to be increased by the association from time to time for the purpose of securing additional loans for its members and providing for the issue of shares to borrowers in accordance with the provisions of the act, but any such increases must be stated in the quarterly reports to the Farm Loan Board.

Powers of national farm loan associations. Every national farm loan association has the power to indorse and thereby become liable for the payment of mortgages taken from its shareholders by the federal land bank of its district; to receive funds advanced by the land bank and to pay over such funds to the borrowers. It may further issue certificates against deposits of current funds and convertible into farm loan bonds when presented at the federal land bank of the district in the amount of \$25 or any multiple thereof; such deposits when received, are forthwith to be transmitted to the land bank and be invested by it in the purchase of farm loan bonds issued by a federal land bank or in first mortgages under the act. The association is further empowered to own such property as may be required for the transaction of its business.

Farm loans made through national farm loan associations. The following statement compiled from data supplied by the Federal Farm Loan Bureau shows the number of loans made by the Federal land banks through the national farm loan associations since the enactment of the federal law, and up to October 31, 1919, inclusive. Totals

are shown for each separate state, for each of the twelve federal land bank districts, and for the entire United States.

Statement showing loans in the twelve federal land bank districts from organization to October 31, 1919.

	Total loans.	
	No.	Amount.
<i>Springfield</i>		
Maine	550	\$1,187,300
New Hampshire	159	333,000
Vermont	324	827,450
Massachusetts	622	1,566,155
Rhode Island	53	125,650
Connecticut	410	1,255,350
New York	1,409	4,327,990
New Jersey	244	810,550
Total	3,771	\$10,433,445
<i>Baltimore</i>		
Pennsylvania	934	\$2,441,200
Virginia	2,484	6,608,250
West Virginia	642	1,172,150
Maryland	216	682,200
Delaware	12	24,500
Total	4,288	\$10,928,300
<i>Columbia</i>		
North Carolina	2,676	\$4,737,800
South Carolina	1,683	4,542,040
Georgia	1,008	2,625,885
Florida	1,437	2,536,770
Total	6,804	\$14,442,495
<i>Louisville</i>		
Tennessee	2,058	\$5,163,700
Kentucky	1,442	3,691,200
Indiana	2,440	8,234,700
Ohio	565	1,810,500
Total	6,505	\$18,900,100
<i>New Orleans</i>		
Alabama	3,493	\$5,892,070
Louisiana	2,681	4,310,190
Mississippi	6,595	8,465,670
Total	12,769	\$18,667,930
<i>St. Louis</i>		
Illinois	1,768	6,841,475
Missouri	2,682	7,223,050
Arkansas	4,924	7,531,755
Total	9,374	\$21,596,280
<i>St. Paul</i>		
N. Dakota	5,264	\$15,912,900
Minnesota	3,256	9,921,100
Wisconsin	1,884	4,455,800
Michigan	2,802	5,093,200
Total	13,206	\$35,383,000

Loans in the twelve federal land bank districts—Concluded.

	Total loans.	
	No.	Amount.
<i>Omaha</i>		
Iowa	2,522	\$17,766,350
Nebraska	2,559	10,770,390
S. Dakota	1,635	6,568,750
Wyoming	455	1,026,200
Total	7,171	\$36,131,690
<i>Wichita</i>		
Kansas	3,147	\$11,101,500
Oklahoma	2,638	5,266,900
Colorado	2,445	5,714,600
New Mexico	1,881	2,878,900
Total	10,111	\$23,961,900
<i>Houston</i>		
Texas	10,643	\$29,999,156
Total	10,643	\$29,999,156
<i>Berkeley</i>		
California	2,931	\$9,588,700
Utah	1,483	4,202,100
Nevada	38	172,600
Arizona	234	615,500
Total	4,686	\$14,578,900
<i>Spokane</i>		
Idaho	2,517	\$ 7,178,645
Montana	4,116	10,102,850
Oregon	3,155	9,188,080
Washington	4,556	9,825,045
Total	14,344	\$36,294,620
<i>Total for 12 districts.....</i>	103,672	\$271,317,876

Federal Land Banks.

The federal farm loan system is essentially a farmer's banking system, and the law contemplates that the farmers shall eventually own and control it. The borrowers in the farm loan associations will ultimately become the entire owners of the federal land banks, as the government stock and the stock originally subscribed by others than borrowers will be gradually paid off and retired, and the subscriptions made by farm loan associations, will supplant the advances which the government made in the beginning, in order to establish the system on a firm basis. During the year ending October 31, 1919, federal land banks refunded \$572,569 to the government, thereby reducing the government holding of stock to \$7,693,240.

Farm loans made by the federal land banks. The following statement compiled from data supplied by the Federal Farm Loan Bureau shows the total number of federal farm loans made by each of the twelve federal land banks in their respective districts from date of organization to October 31, 1919, inclusive.

When a farmer borrows money he is required to buy stock of his local association equal to 5 per cent of his loan. This stock is held by the local loan association as collateral security until the mortgage is paid, when the money is returned to him, or he may use it as the last payment of his debt. The local association uses the money which the borrower pays for his stock to buy stock in the federal land bank; this is done to increase the land bank's capital in order that it may make more loans. The law provides for the automatic increase of the capital of the bank because each local farm loan association must buy stock in the federal land bank equal to 5 per cent of the loans it procures for its members. Now, since each land bank is permitted to lend twenty times its capital to the members of the association, it will be seen that the loaning capacity of the bank is increased twenty thousand for each one thousand dollars added to its capital, the ratio between the capital and the loaning capacity always remaining the same. Accordingly, there is no limit to the capacity of the land bank to meet the needs of the borrower so long as it can sell its bonds. If the loans are conservatively made, no losses can reasonably occur which would at any time depreciate the value of the bonds.

Terms and conditions of loans made by federal land banks. The restrictions placed on federal land banks in making loans are definitely set forth in section 12 of the farm loan act as follows:

"Sec. 12. That no federal land bank organized under this act shall make loans except upon the following terms and conditions:

"First. Said loans shall be secured by duly recorded first mortgages on farm land within the land bank district in which the bank is situated.

"Second. Every mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semi-annual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding one per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years: Provided, that after five years from the date upon which a loan is made additional payments in sums of \$25 or any multiple thereof for the reduction of the principal, or the payment of the entire principal, may be made on any regular installment date under the rules and regulations of the Federal Farm Loan Board: And provided further, that before the first issue of farm loan bonds by any land bank the interest rate on mortgages may be determined in the discretion of said land bank, subject to the provisions and limitations of this act.

"Third. No loan on mortgage shall be made under this act at a rate of interest exceeding 6 per centum per annum, exclusive of amortization payments.

"Fourth. Such loans may be made for the following purposes and for no other:

"(a) To provide for the purchase of land for agricultural use..

"(b) To provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operations of the mortgaged farm; the term "equipment" to be defined by the Federal Farm Loan Board.

"(c) To provide buildings and for the improvement of farm lands; the term "improvement" to be defined by the Federal Farm Loan Board.

"(d) To liquidate indebtedness of the owner of the land mortgaged, existing at the time of the organization of the first national farm loan association established in or for the county in which the land mortgaged is situated, or indebtedness subsequently incurred, for purposes mentioned in this section.

"Fifth. No such loan shall exceed 50 per centum of the value of the land mortgaged and 20 per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in Sec. 10 of this act. In making said appraisal the value of the land for agricultural purposes shall be the basis of appraisal and the earning power of said land shall be a principal factor.

"A reappraisal may be permitted at any time in the discretion of the federal land bank, and such additional loan may be granted as such reappraisal will warrant under the provisions of this paragraph. Whenever the amount of the loan applied for exceeds the amount that may be loaned under the appraisal as herein limited, such loan may be granted to the amount permitted under the terms of this paragraph without requiring a new application or appraisal.

"Sixth. No such loan shall be made to any person who is not at the time, or shortly to become, engaged in the cultivation of the farm mortgaged. In case of the sale of the mortgaged land, the federal land bank may permit said mortgage and the stock interests of the vendor to be assumed by the purchaser. In case of the death of the mortgagor his heir or heirs, or his legal representative or representatives shall have the option, within sixty days of such death, to assume the mortgage and stock interests of the deceased.

"Seventh. The amount of loans to any one borrower shall in no case exceed a maximum of \$10,000, nor shall any loan be for a less sum than \$100.

"Eighth. Every applicant for a loan under the terms of this act shall make application on a form to be prescribed for that purpose by the Federal Farm Loan Board, and such applicant shall state the objects to which the proceeds of said loan are to be applied, and shall afford such other information as may be required.

"Ninth. Every borrower shall pay simple interest on defaulted payments at the rate of 8 per centum per annum, and by express covenant in his mortgage deed shall undertake to pay, when due, all taxes, liens, judgments or assessments which may be lawfully assessed against the land mortgaged. Taxes, liens, judgments or assessments not paid when due, and paid by the mortgagee, shall become a part of the mortgage debt and shall bear simple interest at the rate of 8 per centum per annum. Every borrower shall undertake to keep insured to the satis-

faction of the Federal Farm Loan Board all buildings, the value of which was a factor in determining the amount of the loan. Insurance shall be made payable to the mortgagee as its interest may appear at time of loss, and, at the option of the mortgagor and subject to general regulations of the Federal Farm Loan Board, sums so received may be used to pay for reconstruction of the buildings destroyed.

"Tenth. Every borrower who shall be granted a loan under the provisions of this act shall enter into an agreement, in form and under conditions to be prescribed by the Federal Farm Loan Board, that if the whole or any portion of his loan shall be expended for purposes other than those specified in his original application, or if the borrower shall be in default in respect to any condition or covenant of the mortgage, the whole of said loan shall, at the option of the mortgagee, become due and payable forthwith: Provided, that the borrower may use part of said loan to pay for his stock in the farm loan association, and the land bank holding such mortgage may permit said loan to be used for any purpose specified in subsection fourth of this section.

"Eleventh. That no loan or the mortgage securing the same shall be impaired or invalidated by reason of the exercise of any power by any federal land bank or national farm loan association in excess of the powers herein granted or any limitations thereon.

"Funds transmitted to farm loan associations by Federal land banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower."

Powers of federal land banks. The powers of federal land banks are summarized in Sec. 13 of the law as follows:

"Sec. 13. That every federal land bank shall have power, subject to the limitations and requirements of this act—

"First. To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this act, to buy the same for its own account, and to retire the same at or before maturity.

"Second. To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the federal land bank district within which it is organized or for which it is acting.

"Third. To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under section 12 of this act, and to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments and other sums payable under the terms, conditions, and covenants of the mortgages and of the bonds secured thereby.

"Fourth. To acquire and dispose of—

"(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

"(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But

no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Federal Farm Loan Board in writing.

"Fifth. To deposit its securities, and its current funds, subject to check, with any member of the Federal Reserve System, and to receive interest on the same as may be agreed.

"Sixth. To accept deposits of securities or of current funds from national farm loan associations holding its shares, but to pay no interest on such deposits.

"Seventh. To borrow money, to give security therefor, and to pay interest thereon.

"Eighth. To buy and sell United States bonds.

"Ninth. To charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees not exceeding the actual cost of appraisal and determination of title. Legal fees and recording charges imposed by law in the State where the land to be mortgaged is located may also be included in the preliminary costs of negotiating mortgage loans. The borrower may pay such fees and charges or he may arrange with the federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments. Such addition to the loan shall not be permitted to increase said loan above the limitations provided in section 12."

Restrictions on federal land banks. The following restrictions which the law places on federal land banks are definitely set forth in Sec. 14.

"Sec. 14. That no federal land bank shall have power—

"First. To accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized by the provisions of this act.

"Second. To loan on first mortgages except through national farm loan associations as provided in section 7 and section 8 of this act, or through agents as provided in section 15.

"Third. To accept any mortgages on real estate except first mortgages created subject to all limitations imposed by section 12 of this act, and those taken as additional security for existing loans.

"Fourth. To issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, or to receive from any national farm loan association additional mortgages when the principal remaining unpaid upon mortgages already received from such association shall exceed twenty times the amount of its capital stock owned by such association.

"Fifth. To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this act."

Agents of federal land banks. After the act has been in effect for a year federal land banks are authorized to make loans on farm lands through agents approved by the Federal Farm Loan Board whenever

it appears that national farm loan associations have not been formed and are not likely to be formed in any locality because of peculiar local conditions.

Loans made through agents are subject to the same conditions and restrictions as if they were made through national farm loan associations; but no agent may be employed other than a duly incorporated bank, trust company, mortgage company or savings institution chartered by the state in which it has its principal office.

Federal land banks may pay such agents the actual expenses connected with making loans; such expenses become part of the loan and are paid off in amortization payments. In addition, agents may be allowed a commission not to exceed one-half of one per cent per annum upon the unpaid principal of the loan. Such commission is to be deducted from dividends payable to the borrower on his stock in the federal land bank.

Agents must indorse and become liable upon mortgages received from them and such mortgages may not exceed ten times the amount of the agent's capital and surplus. They may further be required to collect and remit payments on loans without charge. Whenever the district represented by any agent is adequately served by national farm loan associations no further loans may be negotiated therein by agents.

Bonds of federal land banks. While the government does not guarantee the bonds of the federal land banks, they are issued under the supervision of the government and cannot be issued until the government authorities have passed upon the security and satisfied themselves that each dollar of bonds issued is secured by at least two dollars worth of land, and each bond contains on its face a certificate of its regularity signed by the Federal Farm Loan Commissioner, a government official. In addition they are secured by the 5 per cent stock owned by each farmer borrower, and held as collateral security by the local loan associations, and if that is not sufficient, there is the additional 5 per cent liability against each farmer stockholder; moreover, the local farm loan associations are required to indorse every loan made to its members by the federal land bank. The bonds are also backed by the resources of the 12 federal land banks now established in the United States. The wide distribution of the security, unaffected by local conditions in any part of the nation, contributes greatly to its value and stability; for, as a matter of fact, the farm loan bonds are backed by at least twice their face value, plus the indorsement of the national farm loan associations, plus the resources of the 12 federal land banks located throughout the country.

Joint Stock Land Banks.

Differentiated from federal land banks. The joint stock land banks are organized under section 16 of the federal farm loan act. These joint stock banks are private institutions intended for the investment of private capital, but they are supervised by the Federal Farm

Loan Board and inspected by its examiners, and appraisals made by them in placing first mortgage loans are likewise under the control of the board. They have no connection with the federal land banks and are distinguished from them as being cooperative associations of lenders; whereas, the national farm loan associations and the federal land banks operate as cooperative associations of borrowers.

The act provides that private individuals may organize joint stock land banks with capital stock of at least \$250,000 each, and consisting of not less than 10 stockholders. One-half of the stock is to be paid up when the bank starts business, and the other half is subject to call. The shareholders are individually responsible, equally and ratably, and not one for another, to the extent of the par value of the stock owned by them and in addition to the amount paid in and represented by their shares.

The joint stock bank has the right to issue bonds after its capital is fully paid up, just as the federal land banks do, but it may not issue bonds aggregating more than fifteen times the amount of its capital and surplus. Nothing but a first mortgage may be utilized as security for an issue of bonds. After the mortgage loans are made they are deposited with the registrar of the federal land bank district, who forwards them to the Federal Farm Loan Board at Washington for approval. When the loans have been approved the board issues joint stock land bank bonds to the bank which deposited the loans. The sale of these bonds furnishes additional capital for further loans.

The joint stock bank may make mortgage loans at a rate of 1 per cent per annum above the rate which its last issue of bonds bears, but they are not permitted to charge over 6 per cent interest.

Joint stock banks operate under the amortization plan, the same as the federal land banks.

Except as otherwise provided in the law, joint stock land banks have the same general powers and limitations as federal land banks, but they are specifically exempt from a number of provisions applicable to federal land banks. The main difference in the regulation and supervision of the two institutions arises from the fact that one is a cooperative association of borrowers and the other a cooperative association of lenders.

Farm loans made by the joint stock land banks. The following tables show the loans made by joint stock land banks now operating under the federal act. The different banks are arranged in order according to priority of organization. This arrangement presents the chronological as well as the geographical development of the joint stock banks throughout the country. The joint stock banks may make loans on agricultural land only in the state in which they are located and one adjoining state.

Statement showing total loans of joint stock loan banks to October 31, 1919, inclusive.

[Banks are arranged chronologically according to priority of organization.]

Name.	Location.	States	Total Loans Closed to October 31, 1919.
Iowa Joint Stock Land Bank.....	Sioux City, Iowa.....	Iowa and South Dakota.....	\$ 1,281,200.00
Virginian J. S. L. B.....	Charleston, W. Va.....	Ohio and West Virginia.....	2,522,636.79
Fletcher J. S. L. B.....	Indianapolis, Ind.....	Indiana and Illinois.....	3,487,065.00
First Joint Stock Land Bank.....	Chicago, Ills.....	Iowa and Illinois.....	13,395,700.00
Liberty Joint Stock Land Bank.....	Salina, Kansas.....	Kansas and Missouri.....	6,318,000.00
Mississippi J. S. L. B.....	Memphis, Tenn.....	Mississippi and Tennessee.....	833,000.00
Arkansas Joint Stock Land Bank.....	Memphis, Tenn.....	Arkansas and Tennessee.....	624,500.00
Lincoln Joint Stock Land Bank.....	Lincoln, Nebr.....	Iowa and Nebraska.....	7,540,450.00
Bankers Joint Stock Land Bank.....	Milwaukee, Wisc.....	Minnesota and Wisconsin.....	2,665,550.00
First Joint Stock Land Bank.....	Fort Wayne, Ind.....	Indiana and Ohio.....	665,900.00
First Joint Stock Land Bank.....	Minneapolis, Minn.....	Minnesota and Iowa.....	1,395,200.00
Illinois Joint Stock Land Bank.....	Monticello, Ills.....	Illinois and Iowa.....	924,400.00
Montana Joint Stock Land Bank.....	Helena, Montana.....	Montana and Idaho.....	278,700.00
Fremont Joint Stock Land Bank.....	Fremont, Nebr.....	Iowa and Nebraska.....	957,295.00
Des Moines Joint Stock Land Bank.....	Des Moines, Ia.....	Iowa and Minnesota.....	725,100.00
First Texas Joint Stock Land Bank.....	Houston, Texas.....	Texas and Oklahoma.....	494,879.04
Peters Joint Stock Land Bank.....	Omaha, Nebr.....	Iowa and Nebraska.....	195,500.00
Colonial Joint Stock Land Bank.....	Norfolk, Va.....	Virginia and North Carolina.....	13,000.00
Central Ia. Joint Stock Land Bank.....	Des Moines, Iowa.....	Iowa and Minnesota.....	507,000.00
Virginia-Carolina J. S. L. B.....	Norfolk, Va.....	North Carolina and Virginia.....	176,000.00
Southern Minnesota J. S. L. B.....	Redwood Falls, Minn.....	Minnesota and South Dakota.....	1,967,350.00
Dallas Joint Stock Land Bank.....	Dallas, Texas.....	Texas and Oklahoma.....	327,450.00
Wichita Joint Stock Land Bank.....	Wichita, Kansas.....	Kansas and Missouri.....	262,500.00
Union Joint Stock Land Bank.....	Richmond, Va.....	Virginia and North Carolina.....	71,400.00
San Antonio Joint Stock Land Bank.....	San Antonio, Texas.....	Texas and Oklahoma.....	4,000.00
California Joint Stock Land Bank.....	San Francisco, Calif.....	California and Oregon.....	.....
La Fayette Joint Stock Land Bank.....	La Fayette, Ind.....	Indiana and Illinois.....	.....
Kansas-Missouri J. S. L. B.....	Topeka, Kansas.....	Kansas and Missouri.....	.....
First Illinois-Missouri J. S. L. B.....	Champaign, Ills.....	Illinois and Missouri.....	.....
Total			\$47,633,775.83

*Consolidated Statement of Condition of the Joint Stock Land Banks
at the Close of Business October 31, 1919.*

ASSETS.

Mortgage Loans	\$47,633,775.83	
Plus Accrued Interest	675,056.80	
Subtotal	48,308,832.63	
Less-Amortization payments	216,016.10	
Net Mortgage Loans		\$48,092,816.53
U. S. Government Bonds and Securities.....	8,486,879.49	
Accrued Interest on U. S. Bonds.....	89,163.18	
Farm Loan Bonds on Hand (unsold).....	2,419,900.00	
Cash on Hand and in Banks.....	3,415,938.40	
Banking House	247,000.00	
Furniture and Fixtures	34,371.84	
Accounts Receivable	60,554.00	
Other Assets	70,461.95	
Total Assets		\$62,917,085.39

LIABILITIES.

Capital Stock Paid in.....	\$ 7,812,050.00	
Surplus Paid in	151,415.00	
Reserve	35,231.65	
Farm Loan Bonds Authorized.....	46,405,000.00	
Reserved for Interest on Farm Loan Bonds.....	1,023,163.38	
Bills Payable (Money and Bonds borrowed).....	6,006,424.41	
Accounts Payable	1,084,766.05	
Other Liabilities	365,673.94	
Excess of Earnings over Expenses and Interest Charges.....	33,360.96	
		\$62,917,085.39

Amortization Plan of the Federal System.

Loans made by federal land banks or by joint stock land banks must be made on the amortization plan and no mortgage made on any other plan can be accepted as a basis for any issue of farm loan bonds.

This process of paying off an indebtedness by installment payments of a fixed amount, which includes interest and a part of the principal, throughout a period of years, enables a farmer to take a large loan without undue risk. Under the federal plan of amortization a mortgage loan may run from 5 to 40 years at the option of the borrower. The payment of the interest rate and 1 per cent additional per year applied on the principal will wipe out the mortgage in about 36 years. This period may be shortened by making additional payments on the principal, from time to time, as the farmer may find it convenient.

The amortization payments may be made annually or semi-annually, but the semi-annual system has been adopted as the standard, as it is usually an easier method for a farmer operating a small farm. Thus, the semi-annual payment on a \$1,000 mortgage for 36 years at 5 per cent would require a payment of \$30 every 6 months. This payment would wipe out the mortgage and discharge it at the end of the thirty-six year period. The farmer always has the privilege of making additional payments after the mortgage has run for a period of 5 years. After that time he can wipe out his loan in whole or in part on any interest pay day.

Amortization methods of the federal land banks and the joint stock land banks. The amortization methods of the land banks under the federal system have been standardized, so that it is very easy to make these payments to the land bank from which the loan has been taken.

The following table shows the application of succeeding installments in the payment of interest and principal until the entire indebtedness is amortized.

[A loan of \$1,000 at $\frac{1}{2}$ per cent interest repayable in 35 years as compared with a straight loan for the same amount and period of loan.]

Payment Number.	Amortization loan.				Straight loan.	
	Installment.	Interest.	Applied on principal.	Principal still unpaid.	Interest.	Principal still unpaid.
1.....	\$65 00	\$55 00	\$10 00	\$990 00	\$55 00	\$1,000
2.....	65 00	54 45	10 55	979 45	55 00	1,000
3.....	65 00	53 87	11 13	968 32	55 00	1,000
4.....	65 00	53 26	11 74	956 58	55 00	1,000
5.....	65 00	52 61	12 39	944 19	55 00	1,000
6.....	65 00	51 93	13 07	931 12	55 00	1,000
7.....	65 00	51 21	13 79	917 33	55 00	1,000
8.....	65 00	50 45	14 55	902 78	55 00	1,000
9.....	65 00	49 65	15 35	887 43	55 00	1,000
10.....	65 00	48 81	16 19	871 24	55 00	1,000
11.....	65 00	47 92	17 08	854 16	55 00	1,000
12.....	65 00	46 98	18 02	836 14	55 00	1,000
13.....	65 00	45 99	19 01	817 13	55 00	1,000
14.....	65 00	44 94	20 06	797 07	55 00	1,000
15.....	65 00	43 84	21 16	775 91	55 00	1,000
16.....	65 00	42 68	22 32	753 59	55 00	1,000
17.....	65 00	41 45	23 55	730 04	55 00	1,000
18.....	65 00	40 15	24 85	705 19	55 00	1,000
19.....	65 00	38 79	26 21	678 98	55 00	1,000
20.....	65 00	37 34	27 66	651 32	55 00	1,000
21.....	65 00	35 82	29 18	622 14	55 00	1,000
22.....	65 00	34 22	30 78	591 36	55 00	1,000
23.....	65 00	32 52	32 48	558 88	55 00	1,000
24.....	65 00	30 74	34 26	524 62	55 00	1,000
25.....	65 00	28 85	36 15	488 47	55 00	1,000
26.....	65 00	26 87	38 13	450 34	55 00	1,000
27.....	65 00	24 77	40 23	410 11	55 00	1,000
28.....	65 00	22 56	42 44	367 67	55 00	1,000
29.....	65 00	20 22	44 78	322 89	55 00	1,000
30.....	65 00	17 76	47 24	275 65	55 00	1,000
31.....	65 00	15 16	49 84	225 81	55 00	1,000
32.....	65 00	12 42	52 58	173 23	55 00	1,000
33.....	65 00	9 53	55 47	117 76	55 00	1,000
34.....	65 00	6 48	58 52	59 24	55 00	1,000
35.....	62 50	3 26	59 24	.....	55 00	1,000
	\$2,272 50	\$1,272 50	\$1,000 00	.....	\$1,925 00	\$1,000

Comparison at the end of 35 years;

Under straight loan plan—

35 interest payments of \$55 each.....	\$1,925 00
Principal unpaid.....	1,000 00
	\$2,925 00

Under amortization plan—

35 installments, as agreed, paying both interest and principal.....	\$2,272 50
Saving.....	\$652 50

The following method of paying off ahead of time has recently been promulgated by the Federal Farm Loan Board. Its advantages are perfectly plain to any borrower. The regular amortization table

can be used during the entire period covered by the mortgage without any puzzling problem in arithmetic. In the present case, the loan is paid off in 21 years instead of 35. The amount of interest paid is reduced from \$1,272.50, under the regular amortized 35-year loan, to \$768.78, or a saving of \$503.72 in interest.

[A 35-years, amortization loan of \$1,000 at 5½ per cent interest, but with the privilege of repaying succeeding sums that would be regularly applied on the principal.]

Payment Number.	Installment.	Interest.	Applied on principal.	Principal still unpaid.	Additional payment.	Principal still unpaid.
1.....	\$65 00	\$55 00	\$10 00	\$990 00	.....	.....
2.....	65 00	54 45	10 55	979 45	.....	.....
3.....	65 00	53 87	11 13	968 32	.....	.....
4.....	65 00	53 26	11 74	956 58	.....	.....
5.....	65 00	52 61	12 39	944 19	\$ 41 41	\$902 78
6 (9).....	65 00	49 65	15 35	887 43	.....	887 43
7.....	65 00	48 81	16 19	871 24	.....	871 24
8.....	65 00	47 92	17 08	854 16	.....	854 16
9.....	65 00	46 98	18 02	836 14	39 07	797 07
10 (15).....	65 00	43 84	21 16	775 91	.....	775 91
11.....	65 00	42 68	22 32	753 59	.....	753 59
12.....	65 00	41 45	23 55	730 04	107 90	622 14
13 (22).....	65 00	34 22	30 78	591 36	.....	591 36
14.....	65 00	32 52	32 48	558 88	70 41	488 47
15 (26).....	65 00	26 87	38 13	450 34	.....	450 34
16.....	65 00	24 77	40 23	410 11	.....	410 11
17.....	65 00	22 56	42 44	367 67	92 02	275 65
18 (31).....	65 00	15 16	49 84	225 81	.....	225 81
19.....	65 00	12 42	52 58	173 23	55 47	117 76
20 (34).....	65 00	6 48	58 52	59 24	.....	59 24
21.....	62 50	3 26	59 24	.....	.....	.....
\$1,362 50		\$768 78	\$593 72	.....	\$406 28	.....

Application of amortization and interest payments. The law makes the following provision for the application of amortization and interest payments collected on pledged mortgages held in trust:

Amortization and other payments on the principal of first mortgages held by a farm loan registrar as collateral security for the issue of farm loan bonds constitute a trust fund in the hands of the federal land bank or joint stock land bank receiving the same, and must be applied as follows:

In the case of a federal land bank—

(a) To pay off farm loan bonds issued by said bank as they mature.

(b) To purchase at or below par farm loan bonds issued by said bank or by any other federal land bank.

(c) To loan on first mortgages on farm lands within the land bank district, qualified under this act as collateral security for an issue of farm loan bonds.

(d) To purchase United States government bonds.

In the case of a joint stock land bank—

(a) To pay off farm loan bonds issued by said bank as they mature.

(b) To purchase at or below par farm loan bonds.

(c) To loan on first mortgages qualified under section 16 of this act.

(d) To purchase United States government bonds.

The farm loan bonds, first mortgages, United States government bonds, or cash constituting the trust fund aforesaid, are forthwith to be deposited with the farm loan registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Every federal land bank, or joint stock land bank, is required to notify the farm loan registrar of the disposition of all payments made on the principal of mortgages held as collateral security for an issue of farm loan bonds, and the registrar is authorized at his discretion, to order any of such payments, or the proceeds thereof, wherever deposited or however invested, to be immediately transferred to his account as trustee aforesaid.

Investments in Farm Loan Bonds.

Provisions safeguarding investments. Investments in farm loan bonds by the farming population of the country, and by thrifty investors generally, are made attractive by the many safeguards which the law provides in their issue. The following sections indicate that the act gives as careful consideration to safeguarding the interests of investors as it does in promoting the welfare of borrowers:

"Application for farm loan bonds. Sec. 18. That any federal land bank, or joint stock land bank, which shall have voted to issue farm loan bonds under this act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. With said application said land bank shall tender to said farm loan registrar, as collateral security, first mortgages on farm lands qualified under the provisions of section 12, section 15, or section 16 of this act, or United States government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued. Said bank shall furnish with such mortgages a schedule containing a description thereof and such further information as may be prescribed by the Federal Farm Loan Board.

"Upon receipts of such application said farm loan registrar shall verify said schedule and shall transmit said application and said schedule to the Federal Farm Loan Board, giving such further information pertaining thereto as he may possess. The Federal Farm Loan Board shall forthwith cause to be made such investigation and appraisalment of the securities tendered as it shall deem wise, and it shall grant in whole or in part, or reject entirely, such application.

"The Federal Farm Loan Board shall promptly transmit its decision as to any issue of farm loan bonds to the land bank applying for the same and to the farm loan registrar of the district. Said registrar shall furnish, in writing, such information regarding any issue of farm loan bonds as the Federal Farm Loan Board may at any time require.

"No issue of farm loan bonds shall be authorized unless the Federal Farm Loan Board shall approve such issue in writing.

"Issue of farm loan bonds. Sec. 19. That whenever any farm loan registrar shall receive from the Federal Farm Loan Board notice that it has approved any issue of farm loan bonds under the provisions of section 18 he shall forthwith take such steps as may be necessary, in accordance with the provisions of this act, to insure the prompt execution of said bonds and the delivery of the same to the land bank applying therefor.

"Whenever the Federal Farm Loan Board shall reject entirely any application for an issue of farm loan bonds, the first mortgages and bonds tendered to the farm loan registrar as collateral security therefor shall be forthwith returned to said land bank by him.

"Whenever the Federal Farm Loan Board shall approve an issue of farm loan bonds, the farm loan registrar having the custody of the first mortgages and bonds tendered as collateral security for such issue of bonds shall retain in his custody those first mortgages and bonds which are to be held as collateral security, and shall return to the bank owning the same any of said mortgages and bonds which are not to be held by him as collateral security. The land bank which is to issue said farm loan bonds shall transfer to said registrar, by assignment, in trust, all first mortgages and bonds which are to be held by said registrar as collateral security, said assignment providing for the right of redemption at any time by payment as provided in this Act and reserving the right of substitution of other mortgages qualified under sections 12, 15, and 16 of this act. Said mortgages and bonds shall be deposited in such deposit vault or bank as the Federal Farm Loan Board shall approve, subject to the control of said registrar and in his name as trustee for the bank issuing the farm loan bonds and for the prospective holders of said farm loan bonds.

"No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except first mortgages made subject to the conditions prescribed in said sections 12, 15, and 16.

"It shall be the duty of each farm loan registrar to see that the farm loan bonds delivered by him and outstanding do not exceed the amount of collateral security pledged therefor. Such registrar may, in his discretion, temporarily accept, in place of mortgages withdrawn, United States government bonds or cash.

"The Federal Farm Loan Board may, at any time, call upon any land bank for additional security to protect the bonds issued by it.

"Form of farm loan bonds. Sec. 20. That bonds provided for in this act shall be issued in denominations of \$25, \$50, \$100, \$500, and \$1,000; they shall run for specified minimum and maximum periods, subject to payment and retirement, at the option of the land bank, at any time after five years from the date of their issue. They shall have interest coupons attached, payable semi-annually, and shall be issued in series of not less than \$50,000, the amount and terms to be fixed by

the Federal Farm Loan Board. They shall bear a rate of interest not to exceed 5 per centum per annum.

"The Federal Farm Loan Board shall prescribe rules and regulations concerning the circumstances and manner in which farm loan bonds shall be paid and retired under the provisions of this act.

"Farm loan bonds shall be delivered through the registrar of the district to the bank applying for the same.

"In order to furnish farm loan bonds for delivery at the federal land banks and joint stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this act, as the Federal Farm Loan Board may approve, such bonds when prepared to be held in the treasury, subject to delivery upon order of the Federal Farm Loan Board. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. Any expenses incurred in the preparation, custody, and delivery of such farm loan bonds shall be paid by the Secretary of the Treasury from any funds in the treasury not otherwise appropriated: Provided, however, that the Secretary shall be reimbursed for such expenditures by the Federal Farm Loan Board through assessment upon the farm land banks in proportion to the work executed. They may be exchanged into registered bonds of any amount, and re-exchanged into coupon bonds, at the option of the holder, under rules and regulations to be prescribed by the Federal Farm Loan Board.

"Special provisions of farm loan bonds. Sec. 21. That each land bank shall be bound in all respects by the acts of its officers in signing and issuing farm loan bonds, and by the acts of the Federal Farm Loan Board in authorizing their issue.

"Every federal land bank issuing farm loan bonds shall be primarily liable therefor, and shall also be liable, upon presentation of farm loan bond coupons, for interest payments due upon any farm loan bonds issued by other federal land banks and remaining unpaid in consequence of the default of such other land banks; and every such bank shall likewise be liable for such portion of the principal of farm loan bonds so issued as shall not be paid after the assets of any such other land banks shall have been liquidated and distributed: Provided, that such losses, if any, either of interest or of principal, shall be assessed by the Federal Farm Loan Board against solvent land banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding at the time of such assessment.

"Every federal land bank shall by appropriate action of its board of directors, duly recorded in its minutes, obligate itself to become liable on farm loan bonds as provided in this section.

"Every farm loan bond issued by a federal land bank shall be signed by its president and attested by its secretary, and shall contain in the face thereof, a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is

not taxable by national, state, municipal, or local authority; that it is issued against collateral security of United States government bonds, or indorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all federal land banks are liable for the payment of each bond."

IV. OTHER FIRST MORTGAGE SYSTEMS.

State systems. Most of the states that have developed farm loan systems have shown a tendency to follow the federal law in its general outlines. The majority of the states accordingly limit their loans to about 50 per cent of the value of the land, and make no provision for second mortgages. In a number of cases, the states follow the federal system so closely that the net result is duplicated machinery for accomplishing the same purpose.

It has been urged that the states should develop systems that would supplement the federal system and that the state farm loan bureaus are in a peculiarly advantageous position to advance loans on second mortgages because they are in a position to check up local conditions and to make such loans without undue risk. But whatever reasons have been urged for or against existing methods, the fact remains that present state systems frequently duplicate work done by the Federal Loan Board.

The South Dakota constitution provides that "the State or any county or two or more counties jointly may establish and maintain a system of rural credits and thereby loan money and extend credit to the people of this State upon real estate security in such manner and upon such terms and conditions as may be prescribed by general law." . . . (Art. 13, Sec. 1.)

Under this provision a rural credit system was enacted in South Dakota in 1917. (Rev. Code 1919, Secs. 10, 150-10, 173.) And within a two-year period a little more than \$10,000,000 was loaned on the farm lands of that state.

The South Dakota law limits the amount that can be loaned to 70 per cent of the appraised value of the land and 40 per cent of the insured value of the improvements. The maximum amount that can be loaned to any one person is \$10,000. The interest rate for farm mortgage loans varies from $5\frac{1}{2}$ to 6 per cent. Under the amortization plan of paying the principal, the borrower actually pays 7.26 per cent annually, in two semi-annual payments on the 6 per cent basis, and 6.88 per cent on the $5\frac{1}{4}$ per cent basis. Payment at this rate for a period of 30 years pays all the interest and wipes out the principal. A borrower may pay all or any part of his loan on any interest date after 5 years. There are no commissions of any kind to be paid for securing loans and the borrower gets all the money he borrows; none being retained for stock in the farm land bank, as is the case under the federal system. No liability is incurred by the borrower except for his own loan. In case the borrower is unable to meet the interest payments when due, the Farm Loan Board may, in its discretion, defer these payments for

a reasonable length of time. The interest charge on all overdue payments is 8 per cent.

Money loaned under this law may be used for any of the following purposes: (1) To purchase farm land; (2) to purchase equipment, fertilizers, etc., for the proper and reasonable operation of the mortgaged land; (3) for buildings and other improvements on the land; (4) for paying mortgages or other indebtedness incurred for the purposes provided for in the law.

The South Dakota law follows the general plan of the federal act. It has the same general purpose, and it operates practically in competition with the federal farm loan system.

Amendments to the constitution of North Dakota adopted in 1918 opened the way for the development of state farm loans. Sections 182 and 185 as amended provide the basis for the state farm loan system.

Sec. 182, as amended in 1918: "The state may issue or guarantee the payment of bonds, provided that all bonds in excess of \$2,000,000 shall be secured by first mortgages upon real estate in amounts not to exceed one-half of its value; or upon real and personal property of state-owned utilities, enterprises, or industries, in amounts not exceeding its value, and provided further, that the state shall not issue or guarantee bonds upon the property of state-owned utilities, enterprises or industries in excess of \$10,000,000.

"No future indebtedness shall be incurred by the state unless evidenced by a bond issue, which shall be authorized by law for certain purposes, to be clearly defined. Every law authorizing a bond issue shall provide for levying an annual tax, or make other provision, sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax, or of such other provisions, to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax or other provisions discontinued until such debt, both principal and interest, shall have been paid. . . ."

Sec. 185 as amended in 1918: "The state, any county or city may make internal improvements and may engage in any industry, enterprise or business not prohibited by Article 20 of the Constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

Pursuant to the authority granted in these amendments to the constitution the state legislature in 1919 established the Bank of North Dakota and also made provision for the issue of real estate bonds based on first mortgages.

The distinguishing feature of the North Dakota law is the state bank which performs practically the same functions for the state farm loan system that are performed in the federal system by the federal land bank. Although the bank did not begin business until July 28th, 1919, on December 6th of that year it had made loans aggregating

\$1,700,000. Additional loans amounting to \$1,300,000 had been approved subject to the borrower furnishing a merchantable title.

In construing section 182 of the constitution as amended, the Supreme Court of the state held that the language of the amended section authorized the issue of \$2,000,000 of bonded indebtedness, unsecured except by the faith and credit of the state, in addition to any bonded indebtedness existing at the time of its adoption. (*State v. Hall*, 173 N. W. 763 (1919)). This decision of the Supreme Court, given in mandamus proceedings against the secretary of state to compel him to certify the bonds as within the debt limit, settled the question as to the validity of the bonds, and left the way open for putting the rural credit laws into practical operation.

The state of Oregon adopted a constitutional amendment providing for rural credits in 1916. It furnishes a typical example of legislative details embodied in a state constitution, and reads as follows:

"Constitution, article XI a, Rural Credits, Sec. 1. Notwithstanding the limitations contained in Section 7 of Article XI of this constitution, the credit of the state may be loaned and indebtedness incurred to an amount not exceeding two per cent of the assessed valuation of all the property in the state for the purpose of providing funds to be loaned upon the security of farm lands within the state, subject to the limitations herein contained.

"Sec. 2. The governor, secretary of state, and state treasurer shall constitute the state land board, which board is hereby authorized and directed to issue and sell or pledge bonds in the name of the state to be known as Oregon farm credit bonds in an amount not to exceed said two per cent of the assessed valuation of all the property in the state, and to place the proceeds in the state treasury in a fund to be known as the "rural credits loan fund."

"Sec. 3. Said bonds shall be issued in denominations of \$25.00, \$100.00, \$500.00, and \$1,000.00, and shall be issued in series of \$50,000.00, or multiples thereof, drawn to mature in not more than thirty-six years. They shall bear interest at the rate of four per cent per annum and shall be exempt from all taxes levied by the state of Oregon, or any of its subdivisions.

"Sec. 4. Said state land board is authorized and directed to loan the moneys in said rural credits loan fund to owners of farm lands in Oregon upon notes secured by mortgages or deeds of trust constituting first liens on such farm lands in amounts which shall not exceed fifty per cent of the value of such lands, nor \$50.00 per acre on such lands, nor less than \$200.00 nor more than \$5,000.00 to any individual. If pending applications shall at any time exceed the funds available, preference shall be given to loans not exceeding \$2,000.00 in amount.

"Sec. 5. Such loans shall not be made except to owners who operate and occupy the lands mortgaged, and shall be made only for the following purposes: (a) The payment for lands purchased; (b) the purchase of livestock and other equipment, and the making of improvements which, in the judgment of said board, will increase the productivity of such lands or add to their value as a farm home in a

degree to justify such expenditure; and (c) for the satisfaction of encumbrances upon such lands, which, in the judgment of said board, were incurred or assumed by said applicant for the aforesaid purposes.

"Sec. 6. Every applicant for a farm loan shall state clearly in his application the purposes for which such loan is desired, and upon its approval by the board this statement shall be deemed a part of the note or contract under which the loan is granted. But no failure to apply such funds to the purposes stated in such application or enumerated herein shall invalidate a loan when once made, nor shall anything herein contained be deemed to prevent any farm owner from selling or leasing lands subject to such encumbrance; but if he shall violate his said contract by applying the moneys borrowed to purposes other than those stated in his application or enumerated herein, or if he shall lease such lands or sell them to any person not fulfilling the conditions and purposes provided for herein, said board is authorized and directed to require the repayment of said loan upon six months notice, and said note or contract shall contain a clause providing therefor.

"Sec. 7. Such loans shall be repaid with interest accruing in semi-annual or annual instalments on the amortization plan, such instalments being fixed at such sums as will cover the interest rate and will liquidate the debt in a period to be agreed on between said board and the applicant, such period to be not less than ten nor more than thirty-six years; but any debtor may liquidate any part or all of his indebtedness in amounts of \$50.00 or multiples thereof upon any amortization payment date.

"Sec. 8. The rate of interest on loans shall be 5 per cent per annum, provided that in case any series of said farm credit bonds is sold at an average of less than par, the board may charge upon such farm loans as are made from the proceeds of the series so sold below par a rate of interest in excess of 5 per cent, but which shall not exceed by more than 1 per cent the rate which the state must pay for the funds actually obtained from the disposal of its said bonds. The board, however, shall require each applicant to pay an initial charge of 1 per cent of the loan granted, the minimum charge to be \$10.00 to cover the cost of appraisal and examination of title.

"Sec. 9. All surplus funds accruing from the operation of the system of rural credits herein provided for, after paying interest accruing on the aforesaid bonds, and all operating and other expenses arising from the administration of said system of rural credits, shall be placed in the state treasury and become a part of a fund to be known as the 'rural credits reserve fund.' Said rural credits reserve fund shall be loaned on farm lands in the manner herein provided for the rural credits loan fund, and the interest accruing from loans made from said rural credits reserve fund shall be added to it and become part of it. The said rural credits reserve fund shall be irreducible except that it may be drawn upon to reimburse the state for loss incurred in the administration of said system of rural credits.

"Sec. 10. The legislative assembly shall provide in such detail as it shall deem advisable for the carrying out and administering of the

provisions of this amendment, and shall provide adequate safeguards against the use of such loans as an aid to the purchasing and holding of lands for purposes of speculation. Such safeguards shall include clear definitions of the terms 'operate' and 'occupy' used herein. In the absence of such legislation, and subject to the same after its enactment, the state land board shall proceed to administer said system of rural credits under rules and regulations provided by itself, but subject to the provisions herein contained.

"Sec. 11. The provisions of the constitution and laws of Oregon in conflict with this amendment are hereby repealed insofar only as they conflict herewith. The provisions of this amendment shall be self-executing, and shall take effect and be in operation sixty days after their approval and adoption by the people of Oregon."

A number of states that have no specific constitutional provision for rural credit systems, have authority to invest state funds in first mortgage loans on farm lands.

The constitution of Minnesota as amended in 1916, provides that the permanent school and university fund of the state may be invested in "first mortgage loans secured upon improved and cultivated farm lands." (Art. 8, Sec. 8.) Such loans may not exceed 30 per cent of the actual cash value of the land mortgaged. No legislation to carry out this provision has been attempted.

In Arizona a constitutional provision requiring the state treasurer to keep certain "moneys invested in safe interest-bearing securities" (Art. 10, Sec. 7) has likewise left the way open for loans, and in 1917 the Arizona legislature made provision for the investment of state funds in first mortgages on farm lands. The loans are made under regulations prescribed by the governor, secretary of state, and state treasurer, and the amount loaned on any farm may not exceed one-half of the actual valuation.

The farm loan system in Oklahoma is closely connected with the administration of state and school lands. Under article 11, section 6 of the constitution, provision is made for investing permanent common school and other educational funds in first mortgages upon good and improved farm lands. Loans are limited to 50 per cent of the reasonable value of the lands without improvements. In 1919 the legislature made provision for county loan boards, and further prescribed the conditions upon which loans could be authorized on first mortgage security, and also the manner of procuring second mortgages from the home loan fund.

Legislation enacted in Montana in 1915, Chap. 28 and in 1917, Chap. 124 (amended in 1919, chap. 174) makes provision for farm loans on improved farm land, from moneys belonging to the state permanent common school funds and all other permanent state, educational, charitable, and penal institution funds.

Applications for loans on farm lands from the state funds must be made to the secretary of the state board of land commissioners, on forms approved by the attorney-general, and it is the duty of the of the board of land commissioners to fill such applications as rapidly

as such funds are available and in the order in which approved abstracts of title are received. Loans are to be secured by first mortgage, and the amount of each loan is not to exceed two-fifths of the actual cash value of the land. All mortgages given to secure loans of funds on farm lands must be made in the name of the state as mortgagee. The interest rate is six per cent per annum payable annually to the register of state lands. The mortgages run for periods of not less than three nor more than ten years. In the case of mortgages running for ten years the privilege of prepayment is given after three annual interest payments have been made. Examinations and appraisals are made under the direction of the board of land commissioners. Expenses incurred in making examinations and appraising the land are paid out of the several income funds from which the loans are made, but the expenses of perfecting title are borne by the applicant for the loan.

The state land board may sell mortgage farm loans at public auction whenever there are applications on file for loans in excess of the amount of funds on hand for investment. None of the mortgages, nor the notes or obligations secured thereby may be sold for a less amount than the unpaid principal and interest accruing up to the date of sale. The state of Montana may never be held liable for the payment of any portion of the principal or interest of any mortgages, notes, or obligations, so sold, but the purchasers must look to the property on which the mortgages are given and to the makers thereof for the payment of the principal and interest. Whenever any mortgages on farm lands, together with the notes or obligations secured thereby, are sold and assigned by the state board of land commissioners, the purchaser may, in writing, appoint the registrar of state lands as an agent, to whom the payment of the principal and the interest becoming due thereon may be paid, and it then becomes the duty of the register to receive payment of such principal and interest and pay the same over to the holders or owners of such mortgages, notes and obligations. All moneys received from the sale of mortgages and notes, must be deposited in the state treasury and credited to the particular fund or funds from which the investments and loans were originally made, and may then in like manner be reinvested.

A system of farm loans was developed in Maine under chapter 303, laws of 1917 as amended by chapters 141 and 223 laws of 1919. Under this legislation farm loan commissioners are authorized to make investments in approved first mortgages on agricultural lands, from funds accruing from the sale or lease of public lands of the state. Under the soldier settlement law enacted in Maine in 1919 (chap. 189) the "reserve land fund" is made available for carrying out the provisions for soldier settlement on lands of the state, and further provision is made that surplus lands may be opened to other settlers when not required for homes for soldiers.

Most of the soldier settlement laws recently enacted make similar provisions for the settlement of surplus lands by others than soldiers, and likewise extend their other benefits to citizens generally when such benefits are available in excess of demands for soldiers. As these laws

quite generally loan the credit of the state to prospective soldier settlers and others in the purchase of homes and farms, it will readily be seen that this type of land settlement legislation greatly extends the entire field of rural credit in the acquisition of farms by means of loans and advances made through various state agencies. Legislation enacted in 1919, that is typical of this general movement may be found in Arizona, California, Colorado, Maine, Missouri, New Mexico, Oregon, South Dakota, Tennessee, Utah, Washington, and Wyoming. This legislation assumes such a variety of forms that about the only common ground found for all these widely varying laws is the common purpose of extending the aid of the state in the various plans for the settlement of soldiers and of others when surplus means are available. In some of the states the 1919 legislation is amendatory of former laws making provision for land settlement; in such cases the new legislation generally gives soldiers the preference in settlement plans and extends the aid of the state in more substantial forms of credit than were previously available.

A proposed amendment to the Kansas constitution relating to state aid in the purchase of farm homes will be submitted to the people of that state at the general election in 1920. (Kansas Laws 1919, p. 448.) The proposed amendment reads: "Art. 15, Sec. 11. To encourage the purchase, improvements and ownership of agricultural lands and the occupancy and cultivation thereof, provision may be made by law for the creation and maintenance of a fund, in such manner and amount as the legislature may determine, to be used in the purchase, improvement and sale of lands for agricultural purposes. The legislature may provide reasonable preferences for those persons who served in the army and navy of the United States in the World War and holding an honorable discharge therefrom."

In a number of the western states, the state constitution imposes but few restrictions on the business activities of the state government; and frequently wide authority is granted to local governments to engage in business enterprises. This condition of the fundamental law leaves a wide range for experimentation, and the state governments in a number of cases have developed rural credit systems, without the necessity of having the constitution rewritten in order to free themselves of a particular limitation. The absence of constitutional restrictions may also explain the greater number of farm loan systems and cooperative credit associations in the western half of the country. Where economic necessity and political desire unite in demanding a law, it is more readily obtainable if the constitution does not embody some particularized limitation which becomes obstructive in the course of the progress of the state.

Foreign systems. The main features of rural credit systems of different foreign countries were investigated by the commission sent abroad by the government of the United States to study and report upon rural credit legislation in 1913. The vast fund of valuable in-

formation collected by this commission became the basis of the federal farm loan act.¹

The federal act therefore reflects the farm loan experience of the civilized countries of the world, as the substance of the foreign law was digested and the portions deemed most practicable and applicable to conditions in this country were formulated into the present federal farm loan system.

¹ U. S. Senate Documents Nos. 214, 261, and 380, Sixty-third Congress.

V. SYSTEMS BASED ON SECOND MORTGAGES.

A system based on second mortgages has been proposed in a number of states in order to supplement the first mortgage system provided by the federal farm loan act. The objections most frequently urged against the federal farm loan system are that it makes no provisions for second mortgages and that the rate of 50 per cent loaned on the land and 20 per cent loaned on the improvements is inadequate to meet the needs of many farmers. It is further urged that where land values are high and are settled, amounts larger than \$10,000 could safely be loaned, without undue risk to any interest involved. It has accordingly been urged that state systems should be limited to second mortgages so as to supplement the federal farm loan system, instead of merely duplicating its work.

The federal system has been developed on the theory that the farm loan bonds must have so safe a basis of security back of them that there can be no question as to their value or stability, and so be readily sold throughout the country. On the other hand, bonds issued on second mortgages on lands within the limits of any one State would have adequate security where land values are high and conditions settled, as they are found in the rich farming lands of Illinois.

A bill which was considered by the Minnesota legislature in 1919, but was not enacted into law, made provisions for second mortgage loans on Minnesota farms. The bill authorized the issuance of certificates of indebtedness of the state amounting to \$1,000,000. The money so raised was to be used in making second mortgage loans on farms. The total percentage of loans by first and second mortgages combined was limited to 75 per cent of the value of the land and 30 per cent of the value of the permanent improvements.

A number of agricultural experts have pointed out that the upward limit for mortgage loans to any one person could readily be raised from \$10,000 to \$20,000 through the addition of state second-mortgage loans, to the amount set for federal first mortgage loans; and that a limit thus increased would be advantageous in states where land values are as high and as stable as they are in Illinois. Advocates of this plan have further estimated that the percentage of the loan could in this manner be increased from 50 per cent of the value of the land to 60 or even 80 per cent. While it is admitted that second mortgage land bonds could not be as readily sold throughout the entire country as are the federal first mortgage bonds, the proponents of this plan urge that second mortgage bonds on Illinois farms would find a ready sale wherever the high productive value of Illinois land is known.

VI. SYSTEMS FOR SHORT-TIME CREDITS.

In addition to the long time loans secured by mortgages on lands and improvements, the farmer is often in need of short-time credits to supply him with working capital or to provide for unforeseen emergencies in the operation of his business. The personal credit unions which have operated in New Zealand and in Denmark have particularly aided in developing the agricultural resources of those countries. A system of short-time credits which would utilize the personal credit of farmers would be an undoubted aid in a community lacking a sufficient number of local banks to look after such local needs.

In Illinois the local banks throughout the state seem to be meeting the problem of short-time credits for agriculture in an adequate manner, and accordingly, the need for such personal credit unions does not seem to be as pressing as it is in certain communities not so adequately served.

A considerable number of private cooperative credit associations have been organized in the United States, but they have experienced difficulty in winning the confidence of borrowers or investors where they have been operated without any form of state supervision. At the present time the short time credits supplied by local banks throughout the state seem to be meeting the needs of farmers in this direction.

Cooperative credit associations under state supervision have played an important role in the Australian commonwealth. Within recent years a number of states in this country have made provision for such associations. A law enacted in Nebraska in 1919 (ch. 198) is typical of legislation of this sort: the associations are placed under the supervision of the State Banking Board and are empowered to make loans to members. In order further to safeguard their funds, they are empowered to invest such funds as may not be required for loans to members or for immediate use, in bonds of federal, state, local and municipal governments, in bonds issued under the federal farm loan act, or in other securities approved by the State Banking Board.

VII. CONCLUSIONS.

The problems before the constitutional convention with respect to this matter will, of course be as to whether the constitution shall be so changed as to authorize a state system of rural credits, and also as to whether anything shall be done to permit further action with respect to farm tenancy. By Article XI, Section 5 of the constitution, the state is now expressly prohibited from engaging in the banking business in any manner; and by Article IV, Section 20, it is forbidden to loan its credit to any corporation, association or individual. The problem of farm loans, therefore, is necessarily a constitutional problem, and if the state is to be authorized to undertake such loans, these constitutional provisions must be changed. The present language of the constitution with respect to taxation also clearly prohibits the imposition of graduated taxes on large land holdings.

If these matters are to be dealt with, some constitutional change is therefore necessary, and this constitutional change may be accomplished either by omitting present restrictions, or by placing detailed provisions in the constitution with respect to the matters sought to be accomplished. It is hardly likely that all provisions with respect to banking and with respect to taxation will be omitted from the constitution. The authorization of new activities here dealt with may be accomplished merely by rephrasing the present constitutional provisions. The problems of farm tenancy and farm loans are relatively new in this country and it is highly unwise to embody into a constitution detailed provisions, which may soon need change in order to meet changing needs. The Oregon constitutional amendment quoted in full earlier in this bulletin indicates the type of constitutional provisions that should be avoided.

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CONSTITUTIONAL CONVENTION

BULLETIN No. 14

Social and Economic Problems



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I. SUMMARY.

This bulletin discusses the distinctly economic provisions of the Constitution of 1870, and also the various proposals likely to be made to the Constitutional Convention with respect to social and economic matters. In Bulletin No. 4 upon state and local finance will be found a discussion of state and municipal debt limits, with some indication of the relationship of such limits to enterprises which it may be desired to have the state or municipal corporations undertake. In Bulletin No. 7 upon eminent domain and excess condemnation will be found a full discussion of certain proposed extensions of governmental power, in order to enable the government to do certain things not now permitted. The discussion in Bulletin No. 7 deals of course only with the extent to which further governmental activities may be accomplished or aided through the power of eminent domain. In Bulletin No. 8 on the legislative department will be found a chapter dealing with the subject of legislative powers; in this chapter an attempt has been made to indicate the reasons why numerous matters with respect to social and economic legislation have been placed in the texts of state constitutions. In Bulletin No. 10, dealing with the judicial department, will be found a chapter devoted to the power of the courts to declare laws unconstitutional. This power bears a close relationship to the subjects discussed in the present bulletin, inasmuch as a number of the problems which are here discussed will present themselves to the constitutional convention because of decisions holding legislation invalid under the constitution of 1870.

The subject of farm tenancy and rural credits has been deemed sufficiently important to deserve a separate bulletin, and a full treatment of this subject will be found in Bulletin No. 13 of this series. The subject of housing and ownership of homes discussed in this bulletin bears a close relationship to the subject of farm tenancy and rural credits. The one subject looks at the matter from the standpoint of the farming community, and the other from the standpoint of the urban community.

II. EXTENT TO WHICH SOCIAL AND INDUSTRIAL LEGISLATION IS PREVENTED BY THE PRES- ENT CONSTITUTION.¹

In every large industrial state of this country, certain types of legislation have been held invalid as violating broad constitutional guarantees, such as that with respect to due process of law. The Ohio constitutional convention of 1912 proposed several amendments whose purpose was to establish a policy in the state different from that announced by the Ohio supreme court before 1912. Of the amendments adopted by the people of Ohio in 1912 the following four at least were of this character: (a) A constitutional provision authorizing the legislature to pass mechanics lien laws. (b) An amendment authorizing legislation "fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes." (c) A constitutional provision expressly authorizing compulsory workmen's compensation legislation. (d) An express provision that except in cases of extraordinary emergency a day's labor on public works carried on or aided by the state or by any political subdivision thereof should not exceed eight hours a day or forty-eight hours a week.

Prior to 1912 judicial decisions in Ohio had held invalid regulations with respect to mechanics liens and also with respect to the limitation of hours of labor upon public works. There had also been a judicial decision holding it improper for the legislature to require the screening of coal in connection with the payment of wages to miners. The other provisions above referred to were inserted into the Ohio constitution in 1912, because it was feared that the court might hold certain types of legislation unconstitutional, unless such legislation were explicitly authorized by the constitution.

The present constitution of Illinois does not contain a great many provisions similar to those just referred to as having been inserted into the constitution of Ohio in 1912. However Article 4, section 29, is similar in character. This section reads "It shall be the duty of the General Assembly to pass such laws as may be necessary for the protection of operative miners by providing for ventilation, when same may be required, and the construction of escapement shafts, or such other appliances as may secure safety in all coal mines, and to provide for the enforcement of said laws by such penalties and punishments as may be deemed proper." This constitutional provision seems from

¹ Upon the whole matter discussed in this chapter material of interest will be found in the Massachusetts Constitutional Convention Bulletin No. 18, *The Constitutionality of Social Welfare Legislation*.

certain decisions of the court to vest in the General Assembly a wider power as to legislation for the safety of miners than with respect to other types of labor legislation.²

By amendment in 1886 a provision was added to the constitution that: "Hereafter it shall be unlawful for the commissioner of any penitentiary, or other reformatory institution in the State of Illinois to let by contract to any person, or persons, or corporations, the labor of any convict confined within the said institution."

Certain types of legislation are clearly valid under the present constitution, and as to them no constitutional authorization is necessary. On the other hand, if it is already recognized that a certain type of legislation may be validly enacted, placing a provision in the constitution regarding it is likely to operate as a limitation upon legislative power with respect to that type of legislation. State Constitutional provisions are normally construed as limitations upon legislative power, and if a provision is placed in the constitution which was unnecessary as a means of granting legislative power, that provision will be interpreted as limiting the power of the legislature. An important example of this will be found in Nebraska. The framers of the Nebraska Constitution of 1875 placed in that instrument an authorization for the establishment of reform schools for children under the age of sixteen years. The legislature later desired to extend the age of children who might be committed to a reform school, but this was held improper, the court saying that the legislature would have had full power with respect to reform schools in the absence of constitutional provision, but that the constitutional provision must have intended to limit the legislative power as to the type of reform school that might be established.

It may be worth while to review briefly the types of legislation whose validity has been, or is likely to be, sustained:

(a) It is clearly proper under the present constitution for the General Assembly to enact legislation regarding the hours of labor of women. This principle has been fully established by the case of *Ritchie v. Wayman*, 244 Ill. 509 (1910), and *People v. Elderding*, 254 Ill. 559-579 (1912.) It is true of course that in the earlier case of *Ritchie v. People*, 155 Illinois 198 (1895) the Supreme Court of Illinois held unconstitutional an eight-hour labor law for women. However, in the later case the Supreme Court substantially departed from its attitude in the first *Ritchie* case, although it should be understood that the first *Ritchie* case arose under an eight-hour labor law for women, whereas the second case arose under a ten-hour law. No legislation has been enacted in Illinois which reduces the labor of women below ten hours a day. Yet, in view of the case of *Miller v. Wilson*, 236 U. S. 373 (1915) it may be suggested that eight-hour labor legislation for women would probably be upheld by the Illinois Supreme Court. In this matter the court would probably follow the ruling of the United States Supreme Court.

(b) Hours and conditions of labor of children. The prohibition of child labor and the strict regulation of hours and conditions of

² *Starne v. People*, 222 Ill. 189 (1906).

labor of children are matters as to which legislation is now pretty clearly constitutional. Legislative power with respect to children is much greater than with respect to adult males or adult females, and there was a clear pronouncement in favor of the constitutionality of legislation for children in a recent case which went to the United States Supreme Court from the state of Illinois (*Sturgis v. Beauchamp*, 231 U. S. 320.)

(c) Workmen's Compensation. Ten years ago there was serious doubt as to the constitutionality of compulsory workmen's compensation laws, and the New York Court of Appeals in the case of *Ives v. South Buffalo Railroad Company* (201 N. Y. 271) expressly held such legislation unconstitutional. An amendment to the constitution of New York was adopted permitting workmen's compensation legislation in that state, and similar amendments have been adopted in a number of other states. However, such constitutional provisions seem now unnecessary in view of the fact that compulsory workmen's compensation legislation has been upheld by the United States Supreme Court in the recent case of *New York Central Railroad Co. v. White*, 243 U. S. 188 (1917). Since 1917 compulsory workmen's compensation legislation for hazardous employments has been in force in Illinois, and this legislation has not been contested in the courts.

(d) Safety appliances legislation. Illinois has had for a number of years a large amount of legislation regarding safety in factories and in mines. Safety legislation for mines is expressly authorized by the constitution of 1870, but safety legislation with respect to factories and other industrial establishments is sustained generally in this and other states under the police power, independently of any express authorization. With respect to safety legislation there is probably no need whatever of constitutional authorization. It is true that some cases in this state imply a doubt as to the validity of such legislation, but the doubt when expressed by the court has been based not upon the character of the legislation as a whole but upon some element of improper classification. Legislation for the prevention of occupational diseases is also clearly within the police power, and such a case as *People v. Schenck*, 257 Ill. 384 (1913) is based not upon the invalidity of such legislation in general, but upon a classification which was claimed to be improper. In that case the Supreme Court took the view that it was improper to prohibit the use of emery wheels or emery belts in any basement.

(e) The contracting for the use of convict labor is now prohibited by the constitutional amendment of 1886, and this matter is therefore perhaps sufficiently covered by express constitutional provisions. However some effort may be made to place in the constitution a further provision prohibiting the placing of convict-made goods in competition in any manner with goods manufactured by free labor.

(f) There may be some doubt as to the validity of minimum wage legislation, if such legislation were enacted in the state of Illinois. In the case of *Stettler v. O'Hara*, (243 U. S. 629) the United States Supreme Court by an equal division sustained minimum wage legislation for women and children. The court was equally divided in this case because Mr. Justice Brandeis had been the counsel supporting the va-

lidity of the law before he became a member of the United States Supreme Court. It is therefore fairly clear that a majority of the federal Supreme Court are in favor of the constitutionality of minimum wage legislation for women and children. The fact that the United States Supreme Court may sustain the validity of minimum wage legislation does not of course necessarily mean that the validity of such legislation would be sustained by a state supreme court. The State Court is the final interpreter of the broad guarantees contained in a State Constitution, and may, if it sees fit, hold legislation unconstitutional as violative of due process of law, even though such legislation has been held not violative of the due process of law guarantee of the Federal Constitution.

Minimum wage legislation for men would be of doubtful validity in either the state courts or the United States Supreme Court. The case of *Wilson v. New*, 243 U. S., 332, which upheld the wage provisions of the Adamson Law, was clearly based upon a specific emergency and it would probably not be wise to reason from that case to any general view in favor of the validity of minimum wage legislation for men.

The discussion above has related to legislation which is either clearly constitutional or which would probably be held constitutional by the Supreme Court of Illinois. In a number of cases, legislation upon other matters has been held unconstitutional by the Supreme Court and it is possible to say that certain other types of proposed legislation not yet enacted in Illinois would be held invalid if they were enacted. A brief review should be given of types of legislation which would probably be held invalid.

(1) In another chapter of this bulletin will be found a full discussion of the problem of injunctions in labor cases, and of the legislative power to limit the authority of courts to punish for contempt in such cases. As has been indicated, legislation with respect to these matters has been enacted by Congress and by a number of state legislatures. On the other hand legislation of this character has been held improper in California, Massachusetts and New Jersey, and the judicial decisions of this state seem to lead to the conclusion that such legislation would be held invalid in this state under present state constitutional provisions.

(2) Legislation regarding the payment of wages, particularly that requiring the payment of wages in cash and that requiring coal to be screened in the payment of wages to miners, has been held unconstitutional in this state. The Supreme Court of Illinois has been pretty definitely of the view that legislation regulating the payment of wages in this manner is unconstitutional. The leading cases upon this matter are cited in a note.³ Legislation of this character has been upheld by the U. S. Supreme Court, as not violative of due process of law, and there has been some tendency for courts which have once held such legislation invalid to change their view. However a large mass of

³ *Millet v. People*, 117 Ill. 294 (1886); *Frerer v. People*, 141 Ill. 171 (1892); *Ramsey v. People*, 142 Ill. 380 (1892); *Braceville Coal Co. v. People*, 147 Ill. 66 (1893); *Harding v. People*, 160 Ill. 456 (1896); *Kellyville Coal Co. v. Harrier*, 207 Ill. 624 (1904).

possible legislation regarding the payment of wages is now unconstitutional in Illinois.

A proposed amendment to the constitution of Illinois was submitted to the people in 1894. This proposal read as follows: "That the general assembly shall have power and it shall be its duty to enact and provide for the enforcement of all laws that it shall deem necessary to regulate and control contracts, conditions and relations existing or arising from time to time between corporations and their employes." The affirmative vote on the proposal was 153,393, and the negative vote 59,558, but the amendment failed because not receiving a majority of the votes cast at the election.

(3) Hours of labor of men. In the case of *Lochner v. New York* (198 U. S. 45) the United States Supreme Court held invalid a law which limited the hours of labor in bakeries to ten hours a day. The same court in the earlier case of *Holden v. Hardy* (198 U. S. 366) held a limitation of the hours of men in mines and smelters constitutional, on the ground that labor in mines and smelters was hazardous and that the hours might be limited in such employments. The *Lochner* case was distinguished from *Holden v. Hardy* on the ground that labor in bakeries was not hazardous or unhealthful. In the case of *Bunting v. Oregon*, 243 U. S. 426 (1917) the United States Supreme Court upheld an Oregon law which definitely limits the hours of labor of men, and practically departed from the view expressed in the *Lochner* case. The Oregon law was a general ten hour law, but was applied to establishments which had under other legislation been classed as hazardous, although all the employments to which it was related were not hazardous in the strict sense of the word. In view of the *Bunting* case, it is probably now true that the United States Supreme Court would uphold legislation restricting the hours of labor of men, although such legislation might be of doubtful validity if the hours were limited beyond ten hours a day.

It has now come to be generally recognized in this country that a state legislature may limit the hours of labor upon public works, whether such public works are conducted by the state or by a political subdivision of the state. Such legislation was upheld by the United States Supreme Court in the case of *Atkin v. Kansas*, 191 U. S. 217 (1903). In New York, California, Ohio and other states, legislation limiting the hours of labor of men upon public works was held invalid by state courts, and such decisions have lead to constitutional provisions prescribing an eight-hour day upon public works in New York, Ohio, California, Arizona, Colorado, Idaho, Montana, New Mexico, Oklahoma, Utah and Wyoming.

No legislation has been expressly enacted in Illinois limiting the hours of labor upon public works, but decisions of the Supreme Court of Illinois upon municipal contracts have made it clear that an Illinois court would regard such legislation as invalid. In the case of *Fisk v. People*, 188 Ill. 206 (1900), the Supreme Court took the view that the requirements of union labor and of an eight-hour day in municipal public works were invalid, and the attitude of the court pretty clearly indicated that it regarded such regulation as not merely beyond the

power of the city but also as unconstitutional. In the case of *McChesney v. People* 200 Ill. 146, the Supreme Court took the same view as to contract provisions fixing the eight-hour day and prohibiting alien labor. If it is desired to permit a statutory fixing of the hours of labor upon state and municipal public works, this would seem to require a constitutional change in this state.

(4) Legislation making exceptions in favor of union labor with respect to matters of discharge or with respect to employment is pretty clearly not permitted by the constitution of Illinois as now interpreted. In the case of *Gillespie v. People*, 188 Ill. 176 (1900), the Supreme Court held unconstitutional legislation which sought to make it a criminal offense for an employer to attempt to prevent his employes from joining labor unions, or to discharge them because of their connection with labor unions; and this view is also substantially taken by the United States Supreme Court in the recent case of *Coppage v. Kansas* (1915). Legislation of this character would probably be invalid under the constitution of the United States even though there were a state constitutional provision expressly authorizing it.

In the case of *Matthews v. People*, 202 Ill. 389 (1903), the Supreme Court held unconstitutional a provision of the Free Employment Agency Act which prohibited superintendents of agencies from furnishing workmen or lists of workmen to employers whose men were either on a strike or locked out, the court taking the view that this created an unjust and unequal classification.

In the case of *Fisk v. People*, 188 Ill. 206 (1900) the court squarely took a view against the validity of an ordinance discriminating in favor of union labor upon local public works and said: "Under our constitution and laws, any man has a right to employ a workman to perform labor for him whether such workman belongs to a labor union or not, and any workman has a right to contract for the performance of labor irrespective of the question whether he belongs to a labor union or not." The case of the *City of Chicago v. Hulbert*, 205 Ill. 346 (1903) should also be cited in this connection, although the matter here related to the terms of an Act prohibiting the employment of aliens upon public works.

(5) In the case of *Josma v. Western Steel Car and Foundry Co.* 249 Ill. 508 (1911), the Supreme Court of Illinois held invalid legislation penalizing the employment of laborers from another community by misrepresentation as to the conditions of employment or the existence of a strike, saying that there was no distinction in this matter between laborers in another community and those in the same community, and that the classification was therefore invalid. A contrary view was taken by the Supreme Judicial Court of Massachusetts in the case of the *Commonwealth v. Libbey*, 216 Mass. 256 (1914). If legislation of the character held unconstitutional is desired in this state, a constitutional amendment for the purpose may be proposed, although it would seem possible to draft a law in such a way as to meet the objection raised by the court. If, as is contended by those favoring such legislation, the evil aimed at exists only with respect to the deceiving of laborers in another community, no harm would result

from the passage of legislation applicable to such deceit, irrespective of where the laborer might be.

(6) The subjects of old age and sickness insurance are discussed elsewhere in this bulletin. It is probable that constitutional provisions would be necessary to permit the enactment of legislation upon these subjects.

(7) Legislative power under the present constitution is pretty clearly not sufficient to authorize the State or its political subdivisions embarking upon the construction of houses or upon numerous other types of governmental enterprises. A wide expansion of authority with respect to governmental undertakings has taken place in Arizona, Oklahoma, North and South Dakota, and a constitutional amendment has recently been adopted in Massachusetts authorizing the state in times of emergency to engage in the furnishing of certain necessities. Municipal debt limitations in the present constitution would oftentimes prevent the engaging in industrial enterprises, even if constitutional provisions were construed not to prohibit such enterprises; but if it is desired to have the state or its political subdivisions embark upon the enterprises here under discussion, constitutional changes will probably be necessary.

(8) A constitutional amendment was adopted in Massachusetts in 1918 authorizing the control of billboards and public advertising. A similar proposal was rejected by the people of Ohio in 1912. These matters are commented upon in Bulletin No. 7, upon eminent domain and excess condemnation. A constitutional change may be necessary if it is desired to regulate this matter by legislation although a recent decision of the Supreme Court of United States has gone far towards sustaining the regulation of billboards, and this case went to the federal Supreme Court from the state of Illinois. (*Cusack v. Chicago*, 242 U. S. 526).

(9) Projects for the conservation of natural resources are now to a large extent within the state constitutional authority. Here again the problem is in part one of financing such projects, and this matter may require constitutional action if wider state and municipal powers are desired.

(10) The Court of Appeals of New York has sustained legislation limiting the night labor of women, (*People v. Schweinler Press* 214 N. Y. 395), and also legislation requiring a weekly day of rest in certain occupations.⁴

The labor party of Illinois desires that a new constitution "charge the legislature with the duty of providing by law for the reorganization of industries, impressing upon industries a co-operative character and providing for collective bargaining and for the election of labor members to boards of directors." It is questionable whether under the United States constitution legislation would be valid which interfered with the management of private industry and required the election of labor members to boards of directors of corporations. An economic tendency in the direction of greater co-operation between employers

⁴ *People v. Klinck Packing Co.*, 214 N. Y. 121 (1915).

and employes in the management of industries is becoming apparent, and it may be that the courts will come to recognize the validity of legislation requiring such co-operation. It should of course be remarked that this matter has not been passed upon by the federal Supreme Court, and that future action in this field might be sustained, if taken. With respect to co-operative enterprises future legislation in Illinois has already done something by way of encouragement, and in the chapter of this bulletin dealing with corporations will be found a further comment upon the problem of co-operative organizations.

Certain decisions of the Supreme Court of Illinois have been subjected to criticism, but do not prevent legislation in the field to which they apply. For example the case of *Starne v. People* 222 Ill. 189 (1906) held invalid an act requiring washrooms in mines, but the legislation was held invalid upon the ground of an improper classification and later legislation upon the same matter has been upheld by the Supreme Court of Illinois (*People v. Solomon*, 265 Ill. 28, 1914). The case of *Massie v. Cessna*, 239 Ill. 352 (1909) held unconstitutional an act regarding the assignments of wages as security for money loans, but did not prevent legislation in this field.

III. HOUSING AND OWNERSHIP OF HOMES.

The development of industry in recent times has led to the concentration of population in cities with resulting overcrowding of dwellings and insanitary conditions, which frequently endanger the health of the entire community. The problem of securing sanitary homes for workingmen of small means has become acute in some of our larger cities. Various private and public agencies have interested themselves in this problem. Thus we find local, state, and national housing commissions, societies to promote the erection of workmen's dwellings, city and town planning commissions, and various organizations and commissions dealing with housing problems. The United States government found it necessary to embark upon large projects for the construction of houses to meet the needs of communities which increased rapidly in population because of war manufactures.

Constitutional authority now seems ample for the regulation of safety and sanitation in privately constructed houses although there may be some question as to the validity of zoning statutes which seek to preserve districts for purely residential purposes. The subject of zoning is discussed in Bulletin No. 7 on eminent domain and excess condemnation. The subject discussed in this chapter is that of direct governmental aid to improve housing conditions, through the construction of houses or through loans to individuals seeking to acquire homes.

Demonstration or experimental work in providing low cost homes. An appropriation of state funds to aid workers in acquiring homes was approved in Massachusetts in 1917. This appropriation was the result of an agitation begun as far back as 1908 for state aid in obtaining homes. A special commission was appointed to consider the matter and a number of laws bearing on the subject were enacted by the legislature. These various activities finally resulted in the formulation of a constitutional amendment which authorizes the condemnation of land to relieve congestion of population. The amendment was adopted in 1915 and reads as follows:

"The general court shall have power to authorize the commonwealth to take land and to hold, improve, sub-divide, build upon and sell the same, for the purpose of relieving congestion of population and providing homes for citizens: provided, however, that this amendment shall not be deemed to authorize the sale of such land or build-

ings at less than the cost thereof." (Forty-third Article of Amendments.)

Legislation enacted in 1917 (chap. 310) and amended in 1918 (Chap. 204) gives the following powers to a homestead commission:

"Sec. 1. The homestead commission is hereby authorized, with the consent of the governor and council, to take or purchase in behalf of and in the name of the commonwealth, a tract or tracts of land for the purpose of relieving congestion of population and providing homesteads, or small houses or plots of ground, for mechanics, laborers, wage earners of any kind, or others, citizens of this commonwealth; and may hold, improve, subdivide, build upon, sell, repurchase, manage and care for such land and the buildings constructed thereon, in accordance with such terms and conditions as may be determined upon by the commission.

"Sec. 2. The commission may sell land acquired hereunder, or any part thereof, with or without buildings thereon, for cash, or upon such installments, terms and contracts, and subject to such restrictions and conditions as may be determined upon by the commission, and the commission may take mortgages upon said land with or without buildings thereon for such portion of the purchase price and upon such terms as it shall deem advisable, but no tract of land shall be sold for less than its cost, including the cost of any buildings thereon. All proceeds from the sale of land and buildings or other sources shall be paid into the treasury of the commonwealth."

The terms of the constitutional amendment and the statutes enacted for carrying its provisions into effect expressly discard any theory of charity or of absorption of excessive land values in home building.

The report of the homestead commission in 1917 urged that there were not enough wholesome low cost dwellings; that there was no prospect that present methods would ever supply enough, unless the state encouraged their construction; and that, therefore, the state should experiment to learn whether it is possible to build wholesome homes within the means of low paid workers.

In its recommendations the homestead commission asked for an appropriation sufficiently large to allow an experiment or demonstration to be made in providing low cost homesteads in the suburbs of cities and towns. In the language of the report: "The Commission repeats that it is not recommending that the Commonwealth enter the real estate business for the purpose of supplying wholesome homes for low-paid workers, no matter how great the social or individual need may be. It only recommends an appropriation for a single experiment or demonstration, to learn whether it is financially possible to supply such homes for workers, what are the principles and policies upon which such an undertaking should proceed, what are the dangers and what should be the limitations."

Government aid to home owning in foreign countries. The methods of regulation differ greatly in detail in the different foreign

countries. A recent study by the United States bureau of labor statistics (bulletin whole no. 158) has grouped the different systems of government aid under the following classification: (1) Building directly for rental or sale, for government's own employees or for working people generally; (2) Making loans of public funds, including also government guaranty of loans to local authorities, non-commercial building associations, to savings banks whose deposits are guaranteed, or to employers or individuals; (3) Granting exemptions from, or concessions, in taxes or fees or granting some other form of subsidy to building associations or others.

Under these various methods different foreign countries have expended large sums of public funds to aid in the erection of low cost dwellings for wage earners.

State loans for purchase of homes. Under the Constitution of North Dakota, as recently amended, this state may engage in substantially any industrial enterprise. North Dakota legislation of 1919 declares that "for the purpose of promoting home building and ownership the state of North Dakota shall engage in the enterprise of providing homes for residents of the state," and creates a Home Building Association for the purpose of conducting this business. An Appropriation of \$100,000 was made for the work of this association, and further provision was made for the accumulation of funds out of the earnings of the association.

No home is to be built or purchased and sold at a price exceeding \$5,000, except in the case of farm homes, in which case the selling price may not exceed \$10,000. Home Buyers' Leagues are to be organized. Whenever a member of a league has deposited with the association a sum equal to twenty per cent of the total selling price of a home or farm house, the association is required upon his application to purchase or build such home and to convey it to him upon a cash payment of twenty per cent, the balance to be secured by a mortgage, and further payments to be made on an amortization plan so as to extinguish the debt within a period of not less than ten nor more than twenty years. In case of accident, crop failure or other event which reduces the buyers' reasonable income by one-half, all payments under such contract may be extended from time to time for a period of one year.

In the commonwealth of Australia the separate states have gradually developed legislation under which workers have been enabled to borrow government funds for the purpose of acquiring homes. All of the six states of the commonwealth lend money to farmers for buying homesteads in the country, and five of the states lend their funds to workers in general, for the purchase of city or suburban homes.

The money advanced is loaned directly by a government administrative board or bank to the individual borrower. In addition to making loans direct to individuals, Western Australia and New South Wales also buy private land or use crown land for the erection of dwellings to

be sold or rented to workmen of limited means; in such cases long term leases have been the rule. The administration of the system in the different Australian states is delegated to a special board usually within the treasury department. The funds are raised either by annual appropriation or by the issue of bonds. A prospective borrower must show that he is a wage earner, as determined by his income. The maximum amount loaned to an individual varies in the different states. The terms of loans range from 15 to 42 years with the privilege of anticipating repayments at any time.

Legislation in force in Australian states. The following legislation providing for the use of government funds in the purchase of homes for workers has been enacted in Australia:

New South Wales:

Savings Bank Amendment Act, 1913.

Workers' Dwellings Act, 1912.

Queensland: Advances for Homes Act, 1909; amended 1911, 1912.

South Australia: Advances for Homes Act, 1910; amended 1911, 1912.

Victoria: Savings Bank Act, 1890; amended 1896, 1900, 1901, 1903, 1910, 1912.

Western Australia: Workers' Homes Act, 1911; amended 1912.

In New Zealand, government aid to housing is granted under two different systems embodied in two acts: The Workers' dwelling act, 1910; and the State advances act, 1913. The official year book of New Zealand for 1913 gives a full account of these two systems. Under the State advances act money may be loaned for the purpose of purchasing or erecting a dwelling on a land allotment. The loan may not exceed \$2,200, and in no case may it exceed the value of the house to be erected. Application for the loan may be made to the postoffice or to any representative of the valuation department. To be entitled to a loan a worker must show that he is engaged in manual or clerical work, and that his income is not over \$973 per annum. A first mortgage is required as security. Interest is charged at a rate of five per cent and is reducible to four and one-half per cent upon prompt payment. Payments are made in equal annual or semi-annual instalments. At the time of taking a loan a deposit of about \$50.00 is required, together with a small valuation fee of about \$2.00. The main purpose of the Workers' dwellings act is to set apart crown lands or to acquire private lands for the erection of homes for workers. The purchase of a dwelling is effected by a deposit of about \$50.00 and the payment of equal annual instalments distributed over a period of 25½ years. Under this system workers may secure their homes by the payment of amounts about equal to ordinary rent. The houses are arranged in convenient groups to suit the requirements of the workers concerned. The act defines a worker as one whose earnings do not

exceed \$850 per annum, and who is landless. In his annual report for 1911 the superintendent of workers' dwellings thus summed up the benefits from the act: "Except for the deposit of ten pounds (\$48.67) no capital is required; the land is cheap, the government being able to secure convenient blocks at a lower price than is ordinarily paid for single sections; the cost of erection is reduced to a minimum. there are practically no legal charges, and every facility will be given to purchasers to pay any extra sums off the principal owing whenever they may be able to do so." (1911 Report, p. 2.)

Government guaranty of bonds of building companies. The province of Ontario, Canada, has developed a method of combining government aid and private initiative through the guaranty of bonds of incorporated companies which devote themselves to the improvement of housing accommodations. A recent report of the Bureau of Labor of the province gives the following account of the plan:

"An important act was passed (May 6, 1913) to encourage housing accommodation in cities and towns. This law enables city or town councils to guarantee the bonds of an incorporated company with a share capital, whose main purposes are the acquisition of lands in or near a city or town in Ontario, and the building thereon of moderate sized dwellings to be rented at moderate rents, if the council is satisfied that additional housing accommodation is urgently needed, and provided that the main purpose of the company is to help in supplying need and not to make profits. The by-law guaranteeing the bonds must be approved either by the ratepayers or by the provincial board of health. Before the guaranty is given the location of the lands selected and the general plans for the houses shall be approved by the council, or a committee thereof. The total amount of the securities to be guaranteed shall not in the first instance exceed 85 per cent of the value of the lands and improvements. A council which guarantees the bonds of such a company may be represented on the board of directors by one member of the board. The company may not declare a dividend exceeding 6 per cent per annum, but if the dividends in any year do not amount to 6 per cent, the deficiency with interest may be made up in any subsequent year or years. Any profits remaining after paying a 6 per cent dividend, making up any deficiencies, and providing a reasonable contingent fund, shall be expended in acquiring more lands, improving the housing accommodation, or redeeming the capital stock. The shares so redeemed shall not become extinct, but shall be held by a board of trustees."¹

Under this act and very shortly after its passage, the city council of Toronto voted to guarantee bonds to the amount of \$850,000 in

¹ Fourteenth Report of the Bureau of Labor of the Province of Ontario, 1913. Toronto, 1914, p. 308.

favor of the Toronto Housing Co. This company had been active in pushing the above legislation.²

Farm loans and housing in cities. The problem here under discussion has two aspects: (1) The provision of proper housing facilities. (2) Ownership of homes. The matter here under discussion bears a close relationship to the problems of farm tenancy and farm loans, discussed in Bulletin No. 13 of this series.

² United States, Department of Labor, Bureau of Labor Statistics, Bulletin, Whole No. 158, Government aid to home owning and housing of working people in foreign countries. Oct. 15, 1914. Washington Gov. print, 1915, p. 439.

IV. SOCIAL INSURANCE.

Compulsory health insurance. Compulsory health insurance has been adopted in a large number of industrial countries since its first adoption in Germany in 1883. For some years there has been a strong movement for the compulsory health insurance in this country, and this movement has been primarily directly by the American Association for Labor Legislation, which has prepared a model bill upon the subject. The proposal of this association has been introduced in a number of state legislatures. The movement for compulsory health insurance did not begin actively in this country, until after workmens' compensation laws had been passed in a number of states.

In a number of states, commissions have been appointed to investigate the subject of health insurance. A Massachusetts commission reported in 1917 in favor of compulsory health insurance, but a second commission in 1918 made a contrary recommendation. Perhaps the three most important reports prepared by state commissions are those of California in 1917, and of Ohio and Illinois in 1919. The California and Ohio commissions reported in favor of health insurance, and the Illinois commission against health insurance.¹

In view of the fact that compulsory workmen's compensation laws have been upheld by the United States Supreme Court and that some of these laws are organized upon an insurance basis, it is possible that the courts would uphold the validity of compulsory health insurance. However, this matter is doubtful, and the California commission recommended the adoption of a constitutional amendment expressly authorizing compulsory health insurance. A proposed amendment was submitted in California in 1918 and rejected by the people. The text of this proposed amendment is here quoted: "It is hereby declared to be the policy of the State of California to make special provision for the health and welfare and the support during illness of any and all persons, and their dependents, whose incomes, in the determination of the legislature, are not sufficient to meet the hazards of sickness and disability, and for the general industrial welfare in this connection. The legislature may establish a health insurance system applicable to any or all such persons, and for the financial support of such system may provide for contributions, either voluntary or compulsory, from each of the following, namely, from such persons, from employers, and from the state by appropriations.

¹ A full review of the subject with respect to Illinois will be found in the Report of the Health Insurance Commission of the State of Illinois, 1919, p. 647. See also Report of the Ohio Health and Old Age Insurance Commission, 1919, p. 448.

"The legislature may confer upon any commission or court, now or hereafter created, such power and authority as the legislature may deem requisite to carry out the provisions of this section.

"The provisions of this section shall not be controlled or limited by any other provision of this constitution, except the provisions thereof, relating to the passage and approval of acts by the legislature and to the referendum thereof."

Unemployment insurance. The subject of unemployment insurance assisted by governmental funds has not been actively discussed in this country but may be presented in some manner to the constitutional convention. This whole subject will be found thoroughly discussed in a book by I. G. Gibbon, *Unemployment Insurance. A study of schemes of assisted insurance* (London, 1911).

Old age pensions. Governmental pension schemes exist in Illinois for teachers and for a number of classes of local employes. A full statement regarding these pension schemes will be found in the reports of the Illinois Pension Laws Commission.² In the Pension Laws Commission Report for 1918-19 will be found a full review of the constitutional aspects of legislation providing for pensions of public employes. Another type of so-called pension legislation in this state is that which has to do with mothers' pensions. There has been no effort to enact pension legislation in this state other than that based either on the notion that a pension is part of an official compensation or upon the notion that the pension is a means by which the state takes care of its wards. In the case of *People v. Abbott*, 274 Ill. 380 (1915) the Supreme Court said as to pensions of public employes: "Such pensions generally are not considered donations or gratuities. The rule in the majority of jurisdictions is that the legislature has power to require municipalities to pension their employes and raise the funds for that purpose."

A plan of old age pensions involves different constitutional elements from the pensions just referred to, although old age pensions may perhaps be constitutionally justified on the ground that they constitute a legitimate means of preventing pauperism.

Old age pensions have been adopted in a number of countries. A full review of English legislation and its operation will be found in a book by H. J. Hoare, *Old Age Pensions* (London, 1915).

The subject of old age pensions has been investigated in recent years by several state commissions. A report of a special commission in Massachusetts in 1910 was adverse to old age pensions and compulsory old age insurance and recommended that if any scheme were adopted it should be a voluntary contributory scheme. A report was

²Report of Illinois Pension Laws Commission 1916. Report of Illinois Pension Laws Commission, 1918-19.

made in 1919 by a Pennsylvania commission on old age pensions. This report gives a complete review of old age pensions in all countries which have adopted such a plan. It discusses separately the voluntary and subsidized systems; the system of compulsory, contributory old age insurance; and the non-contributory or straight pension system. In 1919 also a report on health insurance and old age pensions was made by the Ohio Health and Old Age Pension Insurance Commission.

Little has been done in this country in the form of legislation regarding old age pensions. Massachusetts adopted in 1908 a plan of savings bank insurance which was intended to enable wage earners to secure life insurance or annuities at the lowest possible cost, and to encourage savings among workingmen. The expense of administering the savings bank insurance is borne largely by the state. Wisconsin in 1911 adopted a state insurance system, although the expense of the administration in this state is paid from the insurance funds.

"No system of old age pensions is in force in continental United States but the territory of Alaska has an optional system whereby an aged person may receive a monthly pension of \$12.50 in lieu of going to the Pioneers' Home at Sitka. The recipient of a pension must be 65 years of age or over and a resident of Alaska for 10 years or since 1905. Arizona adopted an old age pension plan through an initiated act adopted November, 1915, but being crude and plainly unconstitutional in its form, it was promptly declared void by the Arizona Supreme Court."³

The New Hampshire House of Representatives sought in 1917 the advice of the Supreme Court of that state as to the constitutionality of old age pensions. New Hampshire has a constitutional provision that "Economy being a most essential virtue in all states, especially in a young one, no pension should be granted but in consideration of actual services; and such pensions ought to be granted with great caution by the legislature and never for more than one year at a time." The court took the view that the constitutional provision prohibited a system of old age pensions. A similar view would almost necessarily be taken by the courts, upon the basis of constitutional provisions regarding pensions in Maryland and South Carolina.

Constitutional problems in connection with social insurance.

The constitutional problem with respect to social insurance primarily concerns the use of public funds in aid of such schemes. It may be regarded as constitutionally doubtful whether the general assembly of this state may appropriate or authorize the appropriation of public funds for the payment of unemployment or health insurance or of old age pensions. A full discussion of the constitutionality of old age pensions will be found in F. J. Goodnow's *Social Reform and the Constitution* (New York, 1911).

³ Report of Ohio Health and Old Age Insurance Commission p. 271.

V. SOLDIERS' BONUSES AND PREFERENCES.

This chapter attempts to review the types of state legislation which supplements federal action with respect to payment or aid to soldiers.

In Illinois limited provisions were enacted in 1919, giving certain preferences to returned soldiers. Among these provisions is that for free scholarships at the State University and the state normal schools, the scholarships covering tuition and matriculation charges. (p. 922.) Certain preferences are also given returned soldiers under civil service laws, particularly as to appointments under the state classified service (p. 292); under park boards (p. 290); and under civil service in cities (p. 287). Under the state teachers' pension and retirement fund, an amendment (p. 706) provides that time spent with military and naval forces is to be computed as part of the 25-year period of teaching service, providing the returned soldier makes contributions to the pension fund covering the period of his military service. Another act (p. 533) authorizes the director of labor to secure information as to the rehabilitation of discharged soldiers and sailors in industry.

Some of the states have provided small cash payments and bonuses in the way of scholarships in educational institutions. Some merely give exemptions from tuition and matriculation fees. A law enacted by the legislature of Minnesota (Laws, 1919, chap. 338) provides tuition for soldiers in the University of Minnesota, in the state normal schools, in any college of the state which participated in the students' army training corps' work, and in other colleges and schools in the state. The total allowance for tuition to any person is not to exceed \$200. In New York provision is made (Laws 1919, chap. 606) for 450 state scholarships for world war veterans. These scholarships include \$100 a year for tuition and \$100 additional for maintenance. Not more than three persons may be appointed for the same period from any assembly district. Oregon grants a bonus of \$25 a month or \$200 a year for four years for educational purposes to any honorably discharged soldier (Laws, 1919, chap. 428). The state of Washington exempts returned soldiers from paying fees at the state university. (Laws, 1919, chap. 63.) In Massachusetts each officer, enlisted man, or other person having received an honorable discharge from military service may obtain a direct bonus of \$100 upon making application to the proper authorities (Laws, 1919, chap. 283). In its regular session for 1919, North Dakota made an allowance of \$25 a month for each month in service, to be applied for expenses of education or for the purchase of a home or farm. A bill introduced in the special session provides for a slight increase in the amount of compensation to be

granted, and makes the necessary increase for this purpose in the tax levy.

Important legislation has been enacted for soldiers' bonuses in Minnesota and Wisconsin. A Minnesota act approved September 22, 1919, provides that each soldier or sailor shall receive from the state the sum of fifteen (\$15) dollars for each and every month and fraction thereof of service during the war. No soldier, however, is to receive less than fifty dollars. Sums received for tuition under a law referred to in the preceding paragraph are to be deducted, certificates of indebtedness not exceeding \$20,000,000 are authorized to carry out the provisions of the act.

Wisconsin has gone furthest in working out a co-ordination between education and bonus. A general soldiers' bonus law provides ten (\$10) dollars a month for each month a soldier was in service. An educational bonus law provides that a soldier shall "be entitled to receive thirty dollars per month while in regular attendance as a student at any such institution, but not to exceed a total of one thousand and eighty dollars in lieu of the soldier bonus provided for in chapter 667 of the Laws of 1919, except as hereinafter provided." The educational bonus law provides methods for its administration; defines the institution that may be attended; and imposes an additional surtax on incomes, and a state tax not to exceed one mill on each dollar for a period of five years, to defray expenses under the act. Persons receiving the \$10 bonus may also receive free correspondence instruction.¹

Preference in public employment. Quite a number of the states have enacted legislation giving returned soldiers preference in appointments under civil service regulations, and have also provided for their preference in public employment. Among the states that have enacted provisions of this kind during the legislative session of 1919 are: California (p. 1350); Illinois (pp. 287, 290 and 292); Indiana (pp. 423 and 872); Kansas (p. 378); Michigan (p. 402); Oregon (pp. 223, 248, 251 and 809); South Dakota (p. 373); Washington (chap. 14 and 26); and New York (chap. 225). New York has referred a constitutional amendment to the next legislature providing for preference for soldiers in the civil service (p. 1793).

The federal government also gives preference in civil service appointments to honorably discharged soldiers, sailors and marines, and their widows. Preference in appointments to civil service positions is further extended to wives of injured soldiers, sailors or marines who themselves are not qualified, but whose wives are qualified to hold such positions.

¹ For a review of the Wisconsin legislation, see Review of Reviews, December, 1919, and Wisconsin's Educational Horizon, Vol. 2, No. 1 (September, 1919).

Admission to professions. In the legislative sessions for 1919, certain states made provision to facilitate the admission of returned soldiers to the learned professions, particularly in those cases in which their course of study was interrupted by the war. Thus Michigan reduces the regular period for prior study for admission to the bar examination from three years to two years in a law school and makes a corresponding reduction for study with a preceptor. Maine likewise provides for admission to examination at the end of two years' study and, in recognition of the time required for recuperation on the part of returned soldiers, lowers the passing grade to 60 per cent. (p. 15.) New York makes special provision for conferring degrees on dental students who were in the military service (chap. 422).

Exemptions from certain taxes and fees. Provision is made in a number of states for certain small tax exemptions and also for exemption from the payment of certain fees. Among the states which enacted such provisions in 1919 are: California (pp. 139, 160, 269 and 305); Indiana (pp. 199, 697 and 823); Maine (chap. 105 and 218); Michigan (pp. 432 and 585); and New Mexico (p. 345). Provisions exempting soldiers from the necessity of securing hucksters' and peddlers' licenses are found in New York (chap. 42), Delaware (p. 49) and Minnesota (p. 484).

Land settlement plans for soldiers. The most substantial provisions so far enacted by the different states are the land settlement acts to provide homes for returned soldiers.

The national soldiers' settlement bill has been pending in congress for many months. This bill embodies the general plan of the federal government to cooperate with the several states in providing employment and rural homes for returned soldiers. Under this reclamation and settlement plan of the federal government the country is to be divided into three general divisions corresponding to three types of land to be settled. The northern division comprises mainly the cut-over timber land lying principally in Maine, Michigan, Wisconsin and Minnesota. The southern division consists mostly of swamp lands south of the Ohio boundary. The western division includes the arid lands west of the Dakotas and Nebraska. Over two hundred million acres of unused swamp, cut-over, and arid lands are available under reclamation and irrigation plans embodied in the federal land settlement bill. The normal size of the farms will be 80 acres. Half of the land will be completely or partially prepared by the government, which will also erect houses and barns and supply equipment necessary for cultivating the land. The original payment on the land will be 5 per cent of the cost and the remaining payments will be extended over a period of forty years.

State legislation for cooperation with the federal government in this plan for the settlement of soldiers was enacted in a majority of the states in 1919, but since these state laws provide for cooperation with the federal government in the manner provided in the national soldiers' settlement bill this state legislation must remain largely ineffective until the federal bill is enacted by congress.

Legislation typical of the general movement to cooperate with the federal government in its land settlement plan may be found in: Arizona (Laws 1919, chap. 141); California (Laws 1919, pp. 838 and 1182); Colorado (Laws 1919, chap. 151); Maine (Laws 1919, chap. 189); Missouri (Laws 1919, p. 704); New Mexico (Laws 1919, chap. 127); Oregon (Laws 1919, chap. 303); South Dakota (Laws 1919, p. 374); Tennessee (Laws 1919, chap. 140); Utah (Laws 1919, chap. 74 and 106); Washington (Laws 1919, chap. 188); and Wyoming (Laws 1919, p. 242).

Most of this legislation was originally enacted, or else amended in 1919, with the direct object of coordinating federal and states agencies for soldier settlement. Thus the Oregon law (1919), chap. 303) declares:

"Section 2. The object of this act is to provide useful employment and the opportunity to acquire farm homes with profitable livelihood on the land for soldiers, sailors and marines honorably discharged from the service of the United States and other qualified settlers and to provide for cooperation of the state with the agencies of the United States engaged in work of a similar character."

"Section 7. For the purpose of this act the commission may also, under contract with the United States, or any department thereof, undertake any work of farm improvement, subdivision of land, supervision of the settlement of land and the selection of settlers, the agricultural training of prospective settlers, the supervision of short term loans, the rejection of applications for allotments, the collection of moneys, the operation and maintenance of projects undertaken; and may perform any other acts as may be necessary to effect full cooperation with federal agencies for land settlement purposes."

A typical act providing for cooperation with the United States in the settlement of returned soldiers was passed in Maine in 1919, (chap. 189). In the language of the law:

"The object of this act, is, in recognition of military service, to provide employment and rural homes for soldiers, sailors, marines, and others who have served with the armed forces of the United States in the European war or other wars of the United States, including former American citizens who served in allied armies against the Central Powers and have been repatriated, and who have been honorably discharged, hereafter referred to generally as 'soldiers'; and to accomplish such purpose by cooperation with the agencies of the United States engaged in work of a similar character."

In defining the powers and duties of the soldier settlement board of the state the act continues:

"Sec. 4. Available lands; cooperation with United States authorities; powers of board. The board shall satisfy itself of the prac-

tibility of each undertaking proposed, utilizing all related and serviceable state agencies, all which are hereby authorized and directed to cooperate with and assist said board in every way, and thereupon shall cooperate with the authorities of the United States in the preparation of plans for settlement of soldiers. The board is authorized to utilize public lands of the state and to acquire agricultural lands which may be deemed suitable for settlement, together with necessary water rights, rights of way, and other appurtenances, for settlement for purposes of husbandry and business incidental thereto. When deemed advisable in the discretion of the board and the cooperating agencies of the United States, any of said lands may be leased until it may be deemed advisable to sell or use the same. The board may also set aside and dedicate to public use appropriate tracts for roads, school houses, churches or other public purposes. Any lands belonging to the state and deemed by the board suitable for the purposes of this act shall be available for disposition by the board and the state land agent and forest commissioner shall cooperate with the board in every way necessary to carry out the purposes of this act in regard to such lands. The board is hereby authorized to perform all acts necessary to cooperate with the agencies of the United States engaged in work of similar character."

Further provision is made in the act for opening surplus lands to other settlers and for grouping lands in "Soldiers' Districts". The land settlement board is given plenary powers in carrying the act into effect, and it is required to report bi-annually to the legislature and to make recommendations for legislation. It is further required to furnish a copy of its report to the secretary of the interior.

A number of the state farm loan acts were extended in 1919 so as to give soldiers preference in the settlement of available lands. Among these may be mentioned: Arizona (Laws 1919, chap. 141); Oregon (Laws 1919, chap. 303); and South Dakota (Laws 1919, p. 374).

A proposed amendment to the constitution of Kansas (Art. 15, Sec. 11) to be voted upon in 1920 contains a similar preference. The amendment reads in part: "To encourage the purchase, improvement and ownership of agricultural lands and the occupancy and cultivation thereof, provision may be made by law for the creation and maintenance of a fund, in such manner and amount as the legislature may determine, to be used in the purchase, improvement and sale of lands for agricultural purposes."

"The legislature may provide reasonable preferences for those persons who served in the army and navy of the United States in the World War and holding an honorable discharge therefrom."

Vocational rehabilitation. The Federal Government has made general provision for the vocational rehabilitation of soldiers, sailors and marines. The several congressional acts provide for training, allowances and compensation to persons disabled in military service in the World War. The general supervision of the work is placed under

the direction of the Federal Board of Vocational Education. (Act June 27, 1918, chap. 107, sec. 2, as amended Act July 11, 1919, chap. 12. Sec. 3078½ b. U. S. Comp. Stats.)

Committees and boards for welfare of soldiers. In a number of states provision has been made for state committees to supervise the employment of soldiers and to look after their welfare generally in their readjustment to civil life. Typical provisions are found in the legislation of 1919 for California (p. 4); Washington (chap. 9); and Massachusetts (chap. 125).

The act establishing a soldier and sailors' commission in Massachusetts covers most of the subjects included in similar legislation for other states. It reads in part as follows:

"Section 1. There is hereby established the soldier and sailors' commission, whose object shall be to investigate the economic or other conditions which have resulted in the non-employment of many soldiers, sailors and marines who have been honorably discharged or have been released from the service of the United States; to procure employment for them; to take such measures as may be legal and proper to induce former employers of soldiers and sailors to reinstate them in the positions which they held before entering the service; to provide means of support for them and their dependents if they are unable to procure employment, or if they are unable to work on account of disability, or illness; and, in general, to befriend, protect and encourage those citizens of the commonwealth who have received or shall hereafter receive an honorable discharge or release from the military or naval service of the United States.

"Section 2. * * * The commission shall serve without compensation, but shall be allowed such sums for its necessary expenses as may be approved by the governor and council, to be paid out of the appropriation or appropriations for aiding returning soldiers, sailors and marines, in finding employment.

"Section 3. The said commission shall investigate all cases of non-employment among men discharged or released from the military or naval service of the United States which are brought to its attention, shall ascertain, as far as possible, how many discharged soldiers or sailors are seeking employment, what kind of employment they are fitted for, and in what cities or towns they are resident. The commission shall ascertain from the municipal authorities of all cities in the commonwealth, and of the larger towns, what constructive public work in respect to buildings, roads, bridges or otherwise could advantageously be undertaken immediately, or in the near future, in their respective municipalities, what would be the cost of each undertaking, and whether it would be practicable, and of advantage to the public. Similar information as to possible constructive work, and the feasibility and estimated cost thereof shall be obtained by the commission from the various county commissioners and from the commission on mental diseases, the state board of charity, the state board of labor and

industries, the Massachusetts highway commission, the commission on waterways and public lands, the commissioner of agriculture, the state forester, the board of commissioners on fisheries and game, the Massachusetts commission for the blind, the board of education, the home-stead commission, the metropolitan park commission, the metropolitan water and sewerage board, and the transit department of the city of Boston. And it is hereby made the duty of the mayors, or corresponding officers or boards of cities, of the selectmen of towns, and of the other officers, boards, commissions and departments aforesaid, to furnish the commission hereby established with all the information which they possess as to the matters above mentioned, or which they can procure by reasonable efforts. The said information shall be furnished to the commission, as speedily as possible, in pursuance of this act, and without any special request therefor. It shall be the duty of the said commission to report from time to time to the general court, with such suggestions for legislation or otherwise as it may deem necessary or proper; and if any such report shall become necessary after the present general court has been prorogued, it shall be made to the governor."

"Section 4. The commission shall appoint in such industrial centres and other cities and towns of the commonwealth as may seem to it expedient, local soldiers and sailors' committees, or may designate any existing local committee or agency to act as such a committee, and may delegate to said committees such powers and duties as in the judgment of the commission may be necessary effectively to carry out the provisions of this act in all parts of the commonwealth. Such local committees shall, under the supervision and direction of the commission, exercise the powers and duties delegated as aforesaid, and shall make such reports to the commission as it may require. The said commission is hereby authorized to request any persons, associations or corporations which have already established agencies or headquarters for the relief of discharged soldiers, sailors and marines, or shall hereafter establish the same, to cooperate with the said commission or to restrict, divert or cease their efforts, as the commission may deem best for the common good.

"Section 5. The soldiers and sailors' commission shall continue in existence until it is dissolved by proclamation made by the governor; and the governor is hereby authorized and requested to dissolve the commission whenever, in his judgment, the reasons for its existence have ceased."

Conclusions. Soldiers' preferences in civil service laws have been expressly upheld by the Supreme Court of Illinois. (*People v. Brady*, 262 Ill. 578, p. 594, 1914.) There would seem no doubt as to the validity of legislation giving certain privileges to soldiers in state institutions or providing for the physical rehabilitation of soldiers.

Tax exemptions of soldiers are clearly forbidden by the present constitution, which specifies what tax exemptions may be made.

There is no constitutional objection to legislation providing aid to soldiers in obtaining employment. The use of state lands for the settlement of soldiers is probably valid in most states without constitutional change, but little can be accomplished by such a plan in Illinois.

In some states plans have been adopted either (1) for the advancement of money to purchase property for soldiers, or (2) for the payment of tuition money to soldiers, or (3) for the direct payment of soldiers' bonuses. Clearly the state cannot now engage in any banking enterprise (Art. XI, Sec. 5). Loans or advances to soldiers may be forbidden by the provision that: "The state shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of any public or other corporation, association or individual". Article IV, section 19 of the constitution provides that: "The general assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered on a contract made, nor authorize the payment of any claim, or part thereof, hereafter created against the state under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void: Provided, the general assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion."

The constitution seems to have intended to prevent the legislative grant of gratuities, and employes' pension schemes have been upheld on the ground that the pension is a deferred payment for services rendered. (*People v. Abbott*; 274 Ill. 380, 1916).

There is of course no legal obligation upon the state to pay bonuses or other compensation to soldiers who were in the service of the United States, and the constitutional provision just referred to might be held to forbid such payments. The question may also present itself as to whether such payment would constitute a public purpose for which public money may be used. In *Taylor v. Thompson*, 42 Ill. 9 (1866), the state Supreme Court upheld legislation authorizing the payment of local bounties to volunteers.¹

¹ See a further discussion of such bounties in Cooley's Constitutional Limitations, seventh edition, pp. 325-333.

VI. INJUNCTIONS IN LABOR CASES.

Outline of Illinois statute. The Illinois statute provides that the superior court of Cook County and the circuit courts in term time and any judge thereof in vacation shall have power to grant injunctions. No injunction is to be granted without previous notice to the defendants unless it appears from the bill or affidavit that the right of the complainant will be unduly prejudiced if the injunction is not issued immediately or without such notice. In all cases other than those enjoining a judgment the complainant is required to give bond before an injunction is issued, but the statute provides that bond need not be required when, for good cause shown, the court is of opinion that the injunction ought to be granted without bond. Where an injunction is dissolved the court may before finally disposing of the case hear evidence and assess damages to the party damaged by such injunction. An action upon the injunction bond, if one is required, will also lie.

Any person violating an injunction may be punished for contempt.

Operation of injunction procedure. The Illinois practice with respect to injunctions is similar to that in other states, and a summary should here be made of the manner in which injunctions operate in labor cases. Several points should be particularly noted:

(a) Where there are several judges who may issue an injunction, as there usually are in a populous community, the applicant for the injunction has a discretion as to the judge to whom he may apply.

(b) The Illinois statute does not require notice, and the giving of a bond by the applicant for the injunction lies within the discretion of the judge.

(c) The so-called "blanket" injunction has become common in this country in labor cases. Upon this matter the law is well summed up by Burdick's *Law of Torts*.¹

"In this country the practice has grown up of directing the injunction against all persons engaged in the illegal conduct complained of, although some may not be formally named as defendants in the suit, or served with process. This is done on the principle that if the persons are numerous, certain ones may be made parties defendants as representatives of the class."

¹ Burdick's *Law of Torts*, Third Edition, p. 578.

(d) Appeals may be taken from the action of the court granting an injunction, but an appeal does not suspend the operation of the injunction, and the court issuing the injunction may punish violators of it for contempts committed during the pendency of the appeal, even though upon the appeal the injunction is dissolved.

From this it necessarily results that until an appeal is taken and an injunction issued by a lower court held improper, the determination of the lower court is controlling. Even though the determination of the lower court that an injunction should have issued is reversed on appeal, it is still true that the punishment for contempt will hold. That is, even though an injunction was illegally issued by a lower court, the violator of such an injunction is punishable for contempt so long as the injunction remains in force and the action of the lower court is not reversed.

What has just been stated is the law of this country with respect to contempts, and the doctrine of this matter has recently been stated in a very clear manner by the supreme court of Illinois in the case of *Lyon & Healy v. The Piano, Organ and Musical Instrument Workers' International Union*.² In this case Chief Justice Dunn said:

"Where a court has before it a party complainant asking that an injunction issue on a bill, stating a case belonging to a class within the general equity jurisdiction of the court, and also the party against whom the injunction is asked, the court has jurisdiction to decide whether an injunction ought to issue and the character of the injunction, and should the court err in ordering an injunction to issue when one ought not to issue or in ordering an injunction broader in its terms than is justified by the bill, its decree will be reversed, but the error will be no defense to an attachment for contempt for violating the injunction. The error does not deprive the court of its jurisdiction and the decree is binding upon the defendant until vacated or set aside. A party may refuse to obey an order where the court had no jurisdiction to make it, but not on the ground that it was erroneously made. An order made in the exercise of jurisdiction, though erroneous, must be obeyed until modified or set aside by the court making it or reversed by an appellate court."

In this case Justices Carter and Stone specially concurred, saying: "Under repeated decisions of this court on similar, if not identical questions raised here, we think the judgment of the lower court on this, a collateral attack, must be confirmed. We reach this conclusion with reluctance, because we are firmly convinced that the injunction order entered was entirely too sweeping in its provisions, particularly the provision enjoining appellants, or those associating with them, from interfering or attempting to hinder the appellee from carrying on its business in the usual and ordinary way. . . . Furthermore, we are disposed to think that the restraining order is too broad in its phraseology in reference to picketing appellee's place of business, but in view of our conclusion that these questions were not raised in a direct proceeding and cannot

² 289 Ill. 176 (1919).

be raised in a collateral attack on a decretal order, we do not deem it necessary to discuss this question at length."

Two justices dissented without opinion from the decision of the court. Three justices concurred in Chief Justice Dunn's statement that the court having jurisdiction to issue the injunction, a punishment for contempt could not be relieved from. The two other justices agreed with Chief Justice Dunn's conclusions, but took occasion to say that the injunction in this case was an improper one.

If an injunction has been issued, and an appeal is taken from a punishment for contempt for the violation of the injunction, it is proper, however, for the supreme court to pass upon the question as to whether the act sought to be punished as a contempt was actually a violation of the injunction; and if the act is held not to have been a violation of the injunction, the party will on appeal be relieved from punishment.³

Conditions under which injunctions will be issued in labor cases. The law as to this matter laid down by the Illinois supreme court is unsettled, and this statement may also be made regarding the law of substantially all of the other states. The law with respect to labor controversies is one of relatively recent development, and, as in all cases where the law is being first developed, a great deal of uncertainty exists. In labor controversies, injunctions will issue to prevent actions which the court may regard as unlawful, but not for the purpose of enjoining the actual cessation of work. What will be regarded as unlawful depends, in the present unsettled state of the law, primarily upon what the court may regard in a particular case as improper conduct. The law of injunctions in labor cases revolves primarily upon the notion that an act which is lawful if done by one person may become coercive and unlawful if done by a number in combination. In the application of this general principle the tendency of the courts is to adopt the element of motive as the controlling one, and to regard the conduct by a group of persons as lawful if such conduct does not unduly interfere with the rights of others and if the purpose of the conduct is primarily to benefit the group which is acting rather than that of injuring others. However, the determination as to whether the motive is proper or improper rests in the first instance with the court granting the injunction. The supreme court of Illinois has passed upon a number of matters, and it may be proper to indicate here the results in the more important cases. In the case of *O'Brien v. People*⁴ the court said through Justice Wilkin:

"No person or combination of persons can illegally, by direct or indirect means, obstruct or interfere with another in the con-

³ *Illinois Malleable Iron Company v. Michalek*, 279 Ill. 221.

⁴ 216 Ill. 354 (1905).

duct of his lawful business and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees is not only unlawful and actionable but is an interference with the exercise of the highest civil right . . . there can be no doubt that any attempt to coerce the Kellogg Switchboard and Supply Company into signing said agreements by threats to order a strike was unlawful. It was violative of the clear legal right of the company and was unjust and oppressive as to those who did not belong to the labor organizations."

This decision, while involving other matters, was based primarily upon the view that a strike for the closed shop is unlawful, and that actions in connection therewith, even though otherwise lawful, might be enjoined. The case of *Barnes v. Chicago Typographical Union*⁵ is directly in line with the view expressed in the case of *O'Brien v. People*. In the *Barnes* case, however, there are two dissents as against one dissent in the *O'Brien* case. The case of *Franklin Union No. 4 v. People*⁶ is also in line with the two cases just referred to, the court there saying:

"It will be readily conceded by all that labor has the right to organize as well as capital, and that the members of Franklin Union No. 4 had the same legal right to organize said union as the members of the Chicago Typothetae had to form that association, and that the members of Franklin Union No. 4 had the legal right to quit the employment, either singly or in a body, of the members of said association, with or without cause, if they saw fit, without rendering themselves amenable to the charge of conspiracy and that the courts would not have been authorized to enjoin them from so doing, even though their leaving the employment of the members of the association involved a breach of the contract. While such is the law, it is equally true that upon the members of Franklin Union No. 4, either singly or in a body, leaving the employment of the Chicago Typothetae, the members of the association had the right to employ other persons in their places, and when Franklin Union No. 4, its officers and members, agreed together that by calling a strike and by force, threats, intimidation and picketing they would prevent the members of said association from employing other persons in their places, then they entered into an unlawful undertaking, the carrying into effect of which might be enjoined by a court of equity."

These earlier cases, just referred to, proceed upon the assumption that employes had no specific interest in the undertaking in which they were employed, and that once they decided to leave such employment, they might do so, either singly or as a group, but that they could not leave for the purpose of coercing the employer, and that leaving or threatening to leave for the purpose of obtaining a closed shop was illegal. The court, however, in the case of *Kemp v. Division No. 241, Amalgamated Association of Street Electric Railway Employes of America*,⁷ took a different view with respect to this matter. In this

⁵ 232 Ill. 425 (1908).

⁶ 220 Ill. 355.

⁷ 255 Ill. 213 (1912)

case, the court was divided, three judges concurring in one opinion, Justice Carter specially concurring, and three judges dissenting. The court through Justice Cook said:

"No contract rights being involved, the Union employes had a right to quit the service of the railway company either singly or in a body, for any reason they chose, or for no reason at all. If the only purpose of the union employes was to quit the service and permanently sever their connection with their employer, appellees would in no wise be damaged and could have no grounds for injunctive relief. The bill discloses, however, that this was not the only purpose of the members of the union. They did not propose absolutely to sever their connection with their employer, but by means of a strike to withdraw temporarily their service, and then by such means as might be proper and permissible seek to induce their employer to accede to their demands and reinstate them in the service under the conditions they sought to impose. By thus combining it becomes necessary to inquire whether the purpose of the combination was a lawful one Neither can it be said that any actual malice has been disclosed towards the appellees or an intent to commit a wrongful or harmful act against them. No threats are made and no violations threatened. The members of the union have simply said to their employer that they will not longer work with men who are not members of their organization and that they will withdraw from their employment and use such proper means as they may to secure employment under the desired conditions. While this is not a combination on the part of the union employes to maintain their present scale of wages, to secure an advance in the rate of wages or to procure shorter hours of employment, all of which have been universally held to be proper and lawful objects of a strike, it cannot be said that this is not a demand for better conditions and a legitimate object for them to seek to attain by means of a strike."

Justice Carter in a concurring opinion said:

"In my judgment, union workmen, not bound by contract, who inform their employer that they will strike unless he discharge non-union workmen in the same line of employment, should be held to be merely dictating the terms of their own employment; that it is not unlawful for members of a labor union to seek by peaceful means to induce those engaged in the same occupation to become members of such union, and as a means to that end to refuse to allow union laborers to work in the same line of employment in a place where non-union laborers are employed. The proposed purpose of the strike not being unlawful, it necessarily follows that an injunction should not issue as prayed for in the bill."

Three judges vigorously dissented from the views presented by Justice Cook and Justice Carter, urging that the law had been differently established in this state and that "the right of every laborer to dispose of his labor as he may choose for the support of himself and those dependent upon him is as sacred as the right to carry on any lawful business or any other lawful right of a citizen. Governments and courts would be useless if they failed to protect the laborer in the enjoyment of such a right. It can only

be lawfully interfered with by one in the exercise of an equal or superior right and thus the ground upon which the right to obtain the place of another in direct and lawful competition is sustained. The right of a labor organization to enforce a closed shop for the mere purpose of strengthening the labor organization in future contests with the employer is not competition and is not of the same character or equal to the right of the individual to dispose of his labor at his own will."

Whatever view may be taken regarding the minority statement, it seems fairly clear from the cases that the minority is right in saying that the Kemp case alters the previous attitude of the supreme court of Illinois. It may therefore be said that the supreme court of Illinois has in the case just referred to departed from its earlier attitude with respect to the lawfulness of a strike for the closed shop.

Other matters with respect to the lawfulness of strikes and the lawfulness of actions in connection therewith have not been so fully passed upon by the supreme court of Illinois. In the recent case of *Lyon & Healy v. The Piano, Organ and Musical Instrument Workers' International Union*,⁸ the injunction involved is said to have been substantially like the decree of injunction involved in *Barnes & Company v. Chicago Typographical Union*. In spite of this fact, however, two justices dissented without opinion from a judgment sustaining a punishment for contempt in violating the injunction, and two other judges specially concurring took a view squarely that the injunction was too sweeping in its provisions "particularly the provision enjoining the appellants or those associating with them from interfering or attempting to hinder the appellee from carrying on its business in the usual and ordinary way. It is difficult to conceive of a strike without some damage occurring to the parties in the dispute. Even if the strikers commit no physical violence, the striking employes always plan and intend to deprive the employers of their labor and in so doing they necessarily unsettle the work of the employers and in most instances in so doing thereby cause damage. . . . Furthermore, we are disposed to think that the restraining order is too broad in its phraseology in reference to picketing appellees' place of business. . . ."

A strike for the closed shop is regarded as lawful in some states of the union and as unlawful in others. Although the matter of injunctions in labor cases is now pretty fully covered by federal statutes to be referred to in this article, the United States supreme court in recent cases, arising before these statutes were enacted has taken a view against the lawfulness of the strike for the closed shop, Justice Pitney taking for the United States supreme court very much the same view which he had earlier taken as a chancellor in New Jersey.⁹

⁸ 289 Ill. 176 (1919).

⁹ *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229; *Eagle Glass & Mfg. Co. v. Rowe*, 245 U. S. 275 (1917).

There seems to have been a tendency, as is indicated by the attitude of the Illinois supreme court, toward regarding the strike for the closed shop as lawful. The decisions at the present time are, however, opposed to the lawfulness of a sympathetic strike, and there is a general rule now well recognized that it is unlawful to cause the breach of existing contracts, such rule applying to an effort to bring about a breach of contract between employer and employes, as well as to the breaches of other contracts.

If a strike be regarded as unlawful, the problem then presents itself as to what actions may be enjoined in connection with such a strike. The quitting of work is not enjoined, even though the persons quitting work are under contract. This matter is perhaps as well established as any other principle of American law. However, if a strike is regarded as unlawful, courts in this country have enjoined such actions in connection with it as the calling of the strike by labor leaders (that is, the use of the union organization for the purpose of conducting a strike); the payment of strike benefits by a union; the threat to strike for a purpose regarded as unlawful; peaceful persuasion, and peaceful picketing.

However, all of these actions are not regarded as proper even when a strike itself may be considered lawful. If a strike is considered lawful, it is certainly possible in connection with it to use all of the machinery of a union organization, and to pay strike benefits. Peaceful persuasion also appears to be lawful, and in some states peaceful picketing is regarded as lawful, although this is doubtful in Illinois at the present time. In Massachusetts it has been held unlawful to fine members for refusing to strike, even though the strike itself be regarded as lawful. The secondary boycott, either in connection with a strike or otherwise, is generally regarded as unlawful.

It will be noted from this discussion that there are two points at issue: (1) when will a strike or threat to strike be regarded as unlawful, and the use of the machinery of organized labor be substantially forbidden in carrying out the purposes of such a strike, and (2) if a strike be regarded as lawful, what instrumentalities for the conduct of that strike may lawfully be used. As to both of these matters the law both in Illinois and in the other states is unsettled, although to a large extent the matter has been settled by federal legislation, which is quoted in full in this discussion. This legislation has largely adopted the attitude of the labor organizations.

Arguments for and against the restriction of injunctions in labor cases. Those opposed to the restriction of injunctions in labor cases urge that to enact such a restriction will place labor organizations in a preferred position with respect to the law, and that not only is such a preferred position unjustifiable, but that there is no need for such a position in order to protect the legiti-

mate interests of labor. The Kemp case in 255 Ill., is cited as one in which the court went far to sustain the legality of acts of organized labor.

Those who urge the need for a restriction of the use of injunctions in labor cases allege that labor is not asking for a special privilege or a preferred position, but for relief from a situation which operates unequally with respect to labor. Their position is based largely upon the fact that the law with respect to labor controversies is in an unsettled condition, as the law always is in any rapidly growing field of the law. Their arguments may be substantially summarized as follows:

(1) The purpose of an injunction is primarily that of maintaining existing rights, but they assert that the injunction in labor cases normally settles the matter in controversy as the result of an informal hearing, or as the result of action without notice to the laborers. In their view, an injunction is issued by the judge of a lower court (the judge often selected by the applicant for the injunction) and the injunction when issued operates to defeat the laborers in their controversy, and has this effect before the injunction can be dissolved as the result of an appeal to a higher court. Their point is that, inasmuch as the laborers must bring pressure to bear upon their employer promptly or fail, an injunction issued by the lower court, if it is improper, will actually defeat the laborers before the injunction can be removed. In the Lyon & Healy case, which has been referred to above, the majority of the court did not say that the injunction was improper, although two specially concurring judges said this, and two judges dissented. Whether the dissenting judges were of the opinion that the injunction was improper, is, of course, a matter of conjecture. However, if it were true that the four judges were of opinion that the injunction issued by the lower court was improper, the labor leaders urge that the effect of the improper injunction would have been accomplished as against the laborers before it could have been dissolved.

(2) It is also urged by those favoring a restriction of the use of injunctions in labor cases that, even if the injunction be proper on its face, a judge may punish acts which he regards as violating the injunction, but which on appeal may not be so regarded. That is, it is urged that even though the injunction were fair upon its face, the judge of the trial court may actually coerce people into doing things which they had a right to do, even though these things are not properly within the scope of the matters prohibited by the injunction. The case of Illinois Malleable Iron Company v. Michalek¹⁰ is cited on this point.

(3) On the basis of the points made above, those advocating the restriction of the use of the injunction in labor controversies urge that the present situation places a really final decision in the inferior court acting often in an *ex parte* proceeding. They also

¹⁰ 279 Ill. 221 (1917).

charge that inferior courts sometimes act purposely against the decisions of the higher state courts in such matters.¹¹

The chief actual difficulty, as may be indicated from the previous discussion, is the unsettled state of the law as to labor controversies, and the point really contended for by labor organizations and their supporters is either a more definite statement of the law or a limitation upon the machinery through which the law is applied by the courts. The law with respect to a number of these matters has been settled in England, largely in the manner desired by labor organizations, by the Trade Disputes Act of 1906, which is regarded as of sufficient importance to be given here:

1. "An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

2. Lawful in connection with a trade dispute "to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working."

3. "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills."

4. "An action against a trade union, whether of workmen or masters, or against any member or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court."¹²

Proposed legislation in Illinois and legislation in other states.

An effort has been made at several sessions of the Illinois general assembly to obtain legislation, exempting labor controversies from the application of an injunction and providing for jury trial in contempt cases. In 1919 the bills proposed in the Illinois general assembly (house bills 26, 27 and 32) sought primarily to enact as applicable to judicial proceedings in Illinois the provisions of Sections 6, 20, 21 and part of Section 22 of the Clayton Act, the full text of which is given below. That is, the effort was being made in this state to apply to the state courts a rule which has already been adopted by statute with reference to the federal courts.

¹¹ As an instance of this, the case of *Schwarcz v. International Ladies' Garment Workers' Union*, 124 N. Y. Suppl. 968 (1910) is sometimes cited.

¹² 6 Edw. VII, Ch. 47 (1906).

Both before and after the enactment of the Clayton act by Congress, measures to accomplish substantially the same purposes have been enacted by state legislatures. Legislation in California and Massachusetts has been held invalid by the courts of those states, and the decisions are commented upon in a later part of this discussion. The legislature of Montana in 1913 enacted that an injunction should not be granted "in labor disputes under any other or different circumstances or conditions, than if the controversy were of another or different character, or between parties neither or none of whom were laborers or interested in labor questions" (Sec. 6121 as amended in 1913). The Montana court, in a liberal decision upon a labor controversy, took occasion to say that this legislation adds nothing to pre-existing law. (*Empire Theatre Co. v. Cloke*, 53 Mont. 183, 1917.)

The legislature of Kansas in 1913 enacted a law, the substance of which is similar to sections 17 to 20 of the Clayton act. (Kansas Laws, 1913, Chap. 233.) Apparently the validity of this law has not been involved in any case before the Supreme Court of Kansas.

Minnesota legislation of 1917 declares labor not a commodity or an article of commerce, and forbids the use of injunctions in certain cases, using much the same language as section 20 of the Clayton act. (Minnesota session laws, 1917, Chap. 493.)

Utah in 1917 enacted a law which declares labor not a commodity or an article of commerce, limits the use of injunctions in labor cases, limits the penalties for contempts, and provides for jury trial in contempt cases. This act closely parallels sections 6, 20 and 22 of the Clayton act. (Utah session laws, 1917 p. 210). North Dakota in 1919 enacted a law which embodies the substance of section 20 of the Clayton act. Anti-injunction legislation was also enacted in 1919 by Oregon, Washington and Wisconsin, and Iowa exempted labor organizations from the operation of the anti-trust laws.

In the Massachusetts constitutional convention proposals with respect to this subject were made and discussed, but were rejected. (Debates in the Massachusetts Constitutional Convention, 1917-1918, Vol. I, pp. 1040-1165). A full report on labor injunctions in Massachusetts will be found in the forty-seventh annual report on the Statistics of Labor (Boston, 1917).

United States legislation. After a long controversy, congress enacted in 1914 legislation which seeks to meet the objections urged by labor organizations to the use of injunctions in labor cases. This congressional legislation is so important that it is here given in full. The Clayton Act, of which these provisions form a part, deals with the general subject of combinations in restraint of trade, and only the provisions are here given which are appropriate to the subject now under discussion.

Sec. 6. (Labor organizations, etc., not within provisions of act.) That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not

having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof ; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

Sec. 17. (Preliminary injunctions and temporary restraining orders—notice.) That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character ; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section 263 of an act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3d, 1911, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend Section 266 of an act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3d, 1911.

Sec. 18. (Restraining orders etc., security as condition precedent.) That except as otherwise provided in Section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Sec. 19. (Restraining orders, etc.—contents—bonding only upon whom.) That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill

of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employes and attorneys, or those in active concert or participating with them; and who shall, by personal service or otherwise, have received actual notice of the same.

Sec. 20. (Restraining orders, etc.—when not to issue—what acts not to be prohibited.) That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employes, or between employes, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things, of value, or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Sec. 21. (Contempt constituting criminal offense under federal or state law.) That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any state in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

Sec. 22. (Procedure for contempt—rule to show cause—trial and judgment—bail.) That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been

guilty of such contempt, the court or judge thereof, or any judge, therein sitting, may issue a rule requiring the said person so charged to show cause upon a certain day why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: Provided, however, that if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: Provided, that in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such a court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 23. (Conviction of contempt reviewed on writ of error—stay and bail.) That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as

now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. (Certain contempts excluded from operation of Act.) That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section 21 of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. (One year limitation for contempt proceeding—no bar to criminal prosecution—pending proceedings.) That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passing of this Act.

The Sundry Civil Appropriation Act of March 3, 1915, ch. 75, sec. 1, 38 Stat. L. 866, made an appropriation for the enforcement of the anti-trust laws, and contained a proviso, as did similar acts for preceding years, as follows: "That no part of this money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: Provided further, that no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products."¹³

This federal legislation, of course, restricts the federal courts in Illinois, but has no effect whatever upon the state courts, and an unsuccessful effort was made in 1917 and 1919 to enact for Illinois, as applicable to the state courts, statutory provisions which embodied a part of the provisions just quoted above.

Constitutionality of proposed legislation. If it were desired to obtain in Illinois legislation similar to that enacted by congress, a question would present itself as to whether such legislation if enacted

¹³ 38 U. S. statutes at Large, 730 (Oct. 15, 1914).

is likely to be upheld by the state supreme court. In this connection, it should be borne in mind that the apparently accepted constitutionality of the federal legislation does not settle the question as to the state constitutionality of similar legislation if it were enacted by the Illinois general assembly. Two issues present themselves here with respect to this matter: (1) All inferior federal courts are established by congressional legislation, and their jurisdiction is fixed by such legislation. It is commonly held that the power of a legislative body to regulate matters such as those having to do with the issuance of injunctions and the punishment of contempts is larger where the legislation deals with courts not created by a constitution than where it deals with courts established by a constitutional provision. The Illinois trial courts are now provided for by state constitutional provision. (2) The fact that the United States supreme court may hold the provisions of the Clayton Act not violative of "due process of law" and "equal protection of the laws", as guaranteed in the federal constitution, does not necessarily mean that the supreme court of Illinois would take the same view in interpreting substantially identical provisions of the constitution of Illinois. It should here be borne in mind that the state supreme court is the final judicial arbiter as to the meaning of the state constitution, and that it has not been uncommon for state supreme courts to construe state constitutional language more strictly than the identical language in the federal constitution has been construed by the United States supreme court. Further comment upon this matter will be found in the pamphlet dealing with the legislative department.

With respect to the problem of the constitutionality for Illinois of such legislation as the Clayton Act, several points present themselves which will be discussed under the three succeeding headings.

Giving a preferred status to labor. Several cases have arisen upon state legislation exempting certain types of cases from general legal rules. California in 1903 enacted a statute in the following terms:

"No agreement, combination or contract by or between two or more persons to do or procure to be done, or not to do or procure not to be done, any act in contemplation or furtherance of any trade dispute between employers and employes . . . shall be deemed criminal, nor shall those engaged therein be indictable, or otherwise punishable for the crime of conspiracy, if such an act committed by one person would not be punishable as a crime, nor shall such agreement, combination or contract be considered as in restraint of trade or commerce, nor shall any restraining order or injunction be issued with relation thereto."¹⁴

The Act further provided that nothing therein should be construed as authorizing force or violence or threats thereof. In the

¹⁴ Cal. Stat. 1903, p. 289.

case of *Goldberg v. Stablemen's Union*¹⁵ and *Pierce v. Stablemen's Union*.¹⁶ this act was held unconstitutional as denying equal protection of the laws and as interfering with the constitutional right to acquire, possess, enjoy and protect property.

In 1911 the Massachusetts senate asked the opinion of the supreme judicial court of that state as to the constitutionality of a proposed exemption of trade unions and of associations of employers from liability for tortious acts alleged to have been committed by or on behalf of such a union or association. The supreme judicial court said that such proposed legislation would be unconstitutional as depriving of equal protection of the laws, by setting aside a favored few and by discriminating between members and non-members of unions and between members and non-members of employers' associations.

However, the Massachusetts general court in 1914 enacted a statute, the substance of which is as follows: The statute declared it not unlawful to enter into agreements or combinations with a view to lessening hours of labor, increasing wages or bettering conditions of labor, and provided that no injunction should be granted in cases growing out of disputes concerning the terms or conditions of employment or acts done in pursuance thereof "unless such order or injunction be necessary to prevent irreparable injury to property or a property right of the party making the application, for which there is no adequate remedy at law". It also declared that the right to enter the relation of employer and employe, to change that relation, to assume new relations, or to labor as an employe shall "be held and construed to be a personal and not a property right"; and that in cases involving the violation of a contract of employment "where no irreparable damage is about to be committed upon the property or property right of either [employer or employe], no injunction shall be granted but the parties shall be left to their remedy at law". The statute further provided that there should be no criminal liability for workmen entering into an agreement or combination with a view to lessening hours, increasing wages or bettering conditions or for any acts done in pursuance thereof "unless such act is in itself unlawful". It will be noted that this legislation in part covers the same ground as the English Trade Dispute Act of 1906 and that it also covers some of the matters dealt with by the terms of the Clayton Act.

The validity of the Massachusetts legislation of 1914 came before the supreme judicial court of Massachusetts in the case of *Bogni v. Perotti*.¹⁷ In this case one union sought an injunction to prevent interference by another union with its members obtaining work. The supreme judicial court said that labor is property as well as liberty, and that the legislative body could not remove it from judicial protection by saying that it was not so. It further said that "if a laborer must stand helpless in court while others

¹⁵ 149 Cal. 429 (1906).

¹⁶ 156 Cal. 74 (1909).

¹⁷ 112 N. E. 853 (1916).

there receive protection respecting the same general subject which is denied to him", there is a denial of due process of law. The court agreed that the equitable jurisdiction of courts was largely statutory, but said that it was one thing to affect a general scope of equitable remedies and a different one to admit some citizens to have an equitable remedy while denying that remedy to others.

The point here under discussion has not been squarely passed upon by the supreme court of Illinois, but a somewhat similar issue was involved in several cases which have arisen in this state. In the case of *Gillespie v. People*,¹⁸ the supreme court said that it was unconstitutional to make it a criminal offense for an employer to prevent his employes from joining labor unions or to discharge them because of their connection with labor unions.¹⁹

In the case of *People v. Butler Street Foundry Co.*,²⁰ the Illinois supreme court held unconstitutional a provision of law which contained a proviso that "in the mining, manufacture or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms or corporations doing business in this state to enter into joint agreements of any sort, the principal object or effect of which is to maintain or increase wages."

In the case of *Matthews v. People*,²¹ the supreme court held unconstitutional a statutory provision prohibiting superintendents of free employment agencies from furnishing workmen or lists of workmen to employers whose men were on strike or were locked out.

In view of these cases and of other utterances by the supreme court with respect to the matters here under discussion, it seems unlikely that the court will uphold legislation which on its face seems to give a preference in legal treatment to labor organizations or their members.²²

Upon legislation making a distinction between labor organizations and others, the case of *Connolly v. Union Sewer Pipe Company*²³ was cited by the court in *People v. Butler Street Foundry Company* as decisive of the issue there involved. The supreme court of the United States in the *Connolly* case said that a discrimination by anti-trust legislation in favor of agricultural products or live stock in the hands of the producer or raiser was unconstitutional as a denial of equal protection of the laws. In the later case of *International Harvester Company v. Missouri*,²⁴ the United States supreme court took the view that "whether the Missouri statute should have stated its condemnation on restraints generally, prohibiting combined action for any purpose to everybody or confined it as the statute does to manufacturers and ven-

¹⁸ 188 Ill. 176 (1900).

¹⁹ With respect to this matter the same view has been taken by the United States Supreme Court in the case of *Coppage v. Kansas*, 239 U. S. 1 (1915).

²⁰ 201 Ill. 236 (1903).

²¹ 202 Ill. 389 (1903).

²² See also *McChesney v. People*, 200 Ill. 146 (1902) and *City of Chicago v. Hulbert*, 205 Ill. 346.

²³ 184 U. S. 540 (1902).

²⁴ 234 U. S. 199 (1914).

dors of articles, and permitting it to purchasers of such articles; prohibiting it to sellers of commodities and permitting it to sellers of services, was a matter of legislative judgment; and we cannot say that the distinctions made are palpably arbitrary, which we have seen is the condition of judicial review. It is to be remembered that the question presented is of the power of the legislature, not the policy of the exercise of the power." The statute involved in this case had been held by the Missouri supreme court to be "limited to persons and corporations dealing in commodities and not to include combination of persons engaged in labor pursuits." In view of this decision of the United States supreme court, it would seem that the Connolly case is no longer of weight, although the court in the International Harvester case expressly said that it was not overruling the Connolly case.

Limitation of the use of injunctions. The question as to the limitation of the use of injunctions in labor cases has not presented itself very definitely except in the case of *Bogni v. Perotti*, and the parts of that decision bearing upon this matter have been referred to under the preceding heading. It has already been suggested that the inferior federal courts are creations of congress, and that action by the United States supreme court upholding the provisions of the Clayton Act would not necessarily be decisive as to similar legislation in a state where the inferior courts were created by constitutional provision.

Punishment of contempts. Where a court is created by the constitution, the view has been generally taken that the power to punish for contempts is an inherent judicial power. This does not necessarily mean that the legislature has no authority whatever with respect to the matter of contempts, but it does pretty clearly imply that the presumption will be against any action by the legislature with respect to this matter. In a Virginia case which was decided in 1899,²⁵ an act was involved which divided contempts into two classes, direct and indirect, and permitted the accused to obtain trial by jury in indirect contempts, the jury to fix the punishment by verdict. The contempt involved in the case was indirect and a jury was denied. The highest Virginia court upheld the action denying jury trial and said: "the power to punish for contempts is inherent in courts, and is conferred upon them by the very act of their creation." The court concluded that "in the courts created by the constitution there is inherent power of self-defense and self-preservation; that this power may be regulated but cannot be destroyed or so far diminished as to be rendered

²⁵ *Carter's Case*, 96 Va. 791 (1899).

ineffectual by legislative enactment; that it is a power necessarily resident in and to be exercised by the court itself and that the vice of an act which seeks to deprive the court of this inherent power is not cured by providing for its exercise by jury" This case reviews somewhat at length previous decisions upon the matter.

The Virginia constitution of 1902 provides in Section 63 that "the general assembly may regulate the exercise by courts of the right to punish for contempt". In *Burdett's case*,²⁶ which arose after the constitution of 1902 had come into operation, the court takes the same view as in *Carter's case*, but apparently the legislature of Virginia had not acted since the constitutional provision of 1902 had come into effect.

In the Territory of Oklahoma in 1901, a case came into the court involving the constitutionality of legislation limiting the punishment of indirect contempts and providing for jury trial in such cases. The court in the case of *Smith v. Speed*²⁷ said that the courts had derived their jurisdiction from act of congress, that their power to punish for contempt was inherent and that the legislative act was bad. In 1907 Oklahoma adopted a constitutional provision expressly directing the legislature to "pass laws defining contempts and regulating the proceedings and punishment in matters of contempt. Provided, that any person accused of violating or disobeying, when not in the presence or hearing of the court or a judge sitting as such, any order of injunction or restraint, made or entered by any court or judge of the state shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt until an opportunity to be heard is given."

The supreme court of Missouri in two important cases has held invalid legislative acts seeking to limit the conduct which may be punished as contempt and also seeking to limit the amount of punishment for contempt.²⁸ In the latter of these cases the provision was involved which limited the punishment for contempt to a \$50 fine or ten days' imprisonment or both, or to thirty days' imprisonment in case fine was not paid. The decision holding this provision bad was by a bare majority of the court, three of the seven judges vigorously dissenting on the ground that a statute regulating the punishment of contempts within reasonable limits was valid and should be sustained.

A statute regarding jury trials in contempt cases has been expressly sustained in Kentucky. The Kentucky statute provided that "a court shall not, for contempt, impose upon the offender a fine exceeding \$30, or imprison him exceeding thirty hours, without the intervention of a jury."²⁹ The Missouri statute held un-

²⁶ 103 Va. 838 (1904).

²⁷ 11 Okla. 95 (1901).

²⁸ *State v. Shepherd*, 177 Mo. 208 (1903); *C. B. & Q. Ry. Co. v. Gildersleeve*, 219 Mo. 170 (1909).

²⁹ *Richards v. Commonwealth*, 149 Ky. 497 (1911).

constitutional expressly exempted from its terms certain matters with respect to the enforcement of judgments of courts, and the Kentucky court took the view that similar matters were intended to be exempted by the statute upheld in that state.

The constitutions of Georgia, and Louisiana, contain provisions that the power of courts to punish for contempts may be limited by law. The supreme court of Georgia, however, has taken a view in the construction of this constitutional provision which seems to read substantially all meaning out of it.³⁰

The Arkansas constitution contains a provision that "the general assembly shall have power to regulate by law the punishment of contempts not committed in the presence or hearing of the courts or in disobedience of process."

Courts are likely to take a narrow view with respect to constitutional provisions limiting their power to punish for contempts. Attention should, however, be called to the fact that cases regarding these matters have more often arisen with respect to newspaper criticisms of the courts than with respect to labor controversies.

A rejected constitutional proposal in Ohio in 1912 provided that "laws may be passed prescribing rules and regulations for the conduct of cases and business in the courts of the state, regulating the proceedings in contempt and limiting the power to punish for contempt. No order of injunction shall issue in any controversy involving the employment of labor, except to preserve physical property from injury or destruction; and all persons charged in contempt proceedings with the violation of an injunction issued in said controversy shall, upon demand, be granted a trial by jury as in criminal cases." The voters of Colorado in 1912 rejected a proposed constitutional amendment allowing jury trial in cases of constructive contempt.

Conclusions. As has been suggested, the fact that there is federal legislation, and the further fact that there has been a decision by the United States supreme court which would seem to support the validity of legislation such as that here under discussion, is not conclusive as to the state, and the weight of authority in other states is probably now against such legislation, in the absence of constitutional provision, although there is a tendency to recognize the legislature as having power to enact such legislation. Even if the legislation had been squarely upheld by the United States supreme court as not depriving of due process of law nor denying the equal protection of the laws, such decision, as has already been suggested, would not be decisive as to the constitutional question in the states.

The problem here under discussion relates to two things: (1) the substance of the law with respect to labor controversies, and (2) the machinery for the enforcing of such law. In such legislation as the Clayton Act, the two matters are united, and certainty as to the sub-

³⁰ *Bradley v. State*, 111 Ga. 168 (1900).

stance of the law is pretty clearly more desirable than is a limitation of the machinery through which that law is administered. If any provision is to be placed in the constitution of Illinois regarding labor controversies, care should be taken so to phrase the provision that it will not prevent other forms of action desired in the future.

CORPORATIONS, RAILROADS, WAREHOUSES, PUBLIC UTILITIES, BANKING AND INSURANCE.

This chapter seeks to discuss briefly the various provisions of the present constitution regarding corporations in general, and regarding specific types of businesses which are affected with a public interest.

Corporations. With respect to corporations, there are several sections of the present constitution which may raise issues for consideration by the constitutional convention. Section 2 of Article 11 is probably obsolete, and may with safety be omitted.

Section 3 of Article 11 raises several definite problems as to constitutional policy. Cumulative voting is expressly provided for in this section, and with respect to this matter the constitutional provision is self-executing. If it is desired to retain cumulative voting for corporations, the provision should remain unchanged.

The issue also presents itself under this section as to the organization of cooperative corporations. Illinois has a law for the organization of co-operative companies, and this law forbids any one person to own more than five shares of stock in one company. This statutory provision was inserted for the purpose of preventing any one individual from controlling a co-operative company. It would have been constitutionally impossible to permit individuals to own a larger number of shares of stock than they should be permitted to vote. A number of states have copied the Illinois constitutional provision regarding cumulative voting of shares of stock in corporations (California, Idaho, Kentucky, Mississippi, Missouri, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, West Virginia). However, California expressly provides that in co-operative societies members may vote in the manner prescribed by law; and North Dakota in 1918 adopted a constitutional amendment under which "any co-operative corporation may adopt by-laws limiting the voting power of its stockholders." The Wyoming constitution contains a section which requires the legislature to "provide by suitable legislation for the organization of mutual and co-operative associations or corporations." It is, of course, impossible under the Illinois constitutional language to limit voting power or to vary voting power as among different types of stock in corporations.

Article 11, section 14 is unnecessary, and in the view of the Supreme Court was merely inserted out of excess of caution. The right of eminent domain could be used for the condemnation of the property and franchises of corporations irrespective of this provision, although the removal of the provision might be construed to involve implications against legislative power in this respect. This matter

will be found further discussed in Bulletin No. 7 on eminent domain and excess condemnation.

Some states have provided in detail by their constitutions for corporation commissions, which not only control the organization of corporations, but also supervise public utilities. This is true of the constitutions of Virginia, Oklahoma, Arizona, New Mexico and Louisiana. Virginia and Oklahoma, however, expressly provided that constitutional provisions with respect to corporation commissions should be subject to legislative amendment after a certain fixed date.

Railroads. A full review of the present constitutional provisions regarding railroads will be found in an article by Mr. Rush C. Butler in the proceedings of the Illinois State Bar Association for 1917. Mr. Butler sums up his conclusions as follows: "Briefly to summarize, it is my conviction that the constitution of the State of Illinois should be entirely silent on the subject of railroad regulation. In the absence of specific constitutional provisions, the legislature of the state will be vested with the full remaining power of the people of a state to regulate intrastate commerce."

As Mr. Butler says, some of the provisions of the constitution with respect to railroads are obsolete, and some of them are useless. For example, such a provision as Article 11, section 13, providing that "no railroad corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which such corporation was created," is practically unenforceable, and has necessarily been construed in such a way as to be substantially useless. It may probably be said that all of Article 11, sections 9 to 15 is either obsolete or merely repeats matters which it would be within the power of the General Assembly to accomplish.

In connection with railroads, attention should also be called to the provision of Article 2, section 13 that "the fee of land taken for railroad tracks, without the consent of the owners thereof, shall remain in such owners, subject to the use for which it was taken." This constitutional provision has been discussed in Bulletin No. 7 on eminent domain and excess condemnation. It has made difficult the carrying out of city plans which require the relocation of railroad tracks.

Warehouses. The provisions of the constitution regarding warehouses (just as the provisions with respect to railroads) were placed in the constitution when the movement for the regulation of railroads and warehouses was in its infancy. The constitutional provisions in Illinois do not add to the power which would otherwise belong to the General Assembly, and have served little purpose. However, here as with respect to other provisions of the constitution, care should be taken to say that omissions of existing provisions, if made,

are not to be construed as reducing the legislative power. Provisions as to warehouses will be found in the constitutions of North Dakota, Oklahoma and Kentucky. Perhaps attention should also be called to recent constitutional amendments which have extended the state power in South Dakota and North Dakota, so that the states themselves may embark upon the enterprise of operating grain elevators.

Public utilities. Railroads and warehouses of course come within the term "public utilities," but it is desirable to comment briefly upon the effect of Article 11, section 4 of the constitution, which provides that "no law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town or incorporated village without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad." The Supreme Court has said that this section "merely means that the constitution has conferred upon the city, power to determine whether street railways shall be operated upon its streets, and if so, upon what streets. To this extent, and no further, the constitution has committed to the city the control of the operation of street railways in its streets."¹

This section of the constitution, therefore, means nothing more than that the city determines in the first instance whether a street railway shall operate upon its streets. After the city has made this determination, the state power over the operation of the street railroad is complete.

Municipal home rule as to public utilities, and municipal ownership and operation of public utilities present two of the most serious problems which will come before the constitutional convention. The power of the General Assembly to grant municipal home rule with respect to public utilities and to authorize cities to own and operate their public utilities is probably now unquestioned, and the General Assembly has authorized municipal ownership and operation to a very large extent. The supervision over public utilities is in substantially complete form in the hands of state authorities under present legislation. Efforts have been made for some years to obtain legislation which might enlarge supervision of cities over their local public utilities.

With respect to municipal ownership of public utilities, the primary constitutional question is that of debt limits. Under existing municipal debt limits, it is impossible for the city of Chicago, and for many other cities, to acquire the ownership of their local public utilities. This matter will be found fully discussed in the chapter dealing with debt limits, which appears in Bulletin No. 4, on state and local finance, and in Bulletin No. 6, dealing with municipal home rule.

¹ *City of Chicago v. O'Connell*, 217 Ill. 561 (1917), recently affirmed by the United States Supreme Court.

Banks. With respect to banks, several issues will present themselves to the constitutional convention. Perhaps the most important issue likely to present itself is that of farm loans. Under the terms of the present constitution, it is impossible for the state to embark in any way upon farm loan enterprises, and an effort will be made to obtain authority for such enterprises. The subject of farm loans will be found fully discussed in Bulletin No. 13, on farm tenancy and rural credit.

Another question will present itself with respect to Article 11, section 5 of the constitution as to whether the provision for a popular referendum shall remain with respect to banking legislation. The present provision has come to be a formality, and banking laws are approved by the people almost as a matter of course. The requirements for a referendum upon bank legislation came into constitutions in the main before the Civil War, largely as the result of unfortunate state experiences with banking, and it may be urged that such provisions are no longer needed. Michigan, Minnesota, and Wisconsin now provide for the enactment of banking legislation by a two-thirds vote in each of the two houses.

Article 11, section 6 prescribes a double liability for stockholders in banks, and some discussion may present itself with respect to this liability. It should be noted, however, that the double liability of bank stock with respect to state banks, is the same as the liability by federal legislation for federal national banks, and that there has, as yet, been no tendency to remove such liability from the constitutions which contain provisions of this character.

Attention may be called to the fact that the banking provisions of the constitution contains details regarding banks of issue. There have been no banks of issue in the state since the Civil War, and this provision was inserted in the constitution of 1870 in order to provide for the contingency that Congress might remove the federal tax upon state bank note issues. This contingency is not likely to arise, and for this reason the removal of these provisions may be suggested.

Insurance. The constitution of Illinois contains no provisions regarding insurance. Within recent years, provisions have come into some state constitutions with respect to insurance, although such provisions have added nothing to the general legislative power for the regulation of this industry. It is possible, however, that the proposal may be made to embody into the constitution provisions regarding the regulation of insurance.

VIII. CANALS AND INTERNAL IMPROVEMENTS.

There are a number of provisions in the present constitution of Illinois which prevent the state's engaging either directly or indirectly in various projects of internal improvement. Some of these provisions were first introduced in 1848, because of the disastrous experience which the state had had with internal improvement projects previous to that date. Constitutional provisions introduced in 1848 were primarily directed against state activities in fields of internal improvements. To these provisions were added in 1870 provisions intended to prevent municipalities of the state from loaning their credit or becoming interested in railroads and other projects. Constitutional debt limits upon municipal corporations were also imposed for the same purpose, and a limitation upon the taxing power of counties.

Article IV, Section 18, of the constitution forbids the incurring of a debt by the state in excess of \$250,000, without a vote of the people, and for the approval of the proposal to incur such a debt the measure must receive "a majority of the votes cast for members of the general assembly".

Article IV, Section 20, provides that "the state shall never pay, assume or become responsible for the debts or liabilities of or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual".

Section 12 of Article IX forbids the incurring of indebtedness in the aggregate exceeding five per cent of the value of the taxable property of any county, city, township, school district or other municipal corporation, and requires that at the time of incurring any indebtedness provision shall be made for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due and to discharge the principal within twenty years.

Article IX, Section 8 limits the aggregate taxes of counties to seventy-five cents on the one hundred dollars valuation, unless authorized by a vote of the people of the county.

The constitutional convention of 1869-70 submitted to the people a separate section which provided that "no county, city, town, township or other municipality shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation." This separate section was adopted by the people.

A separate section was also submitted to and adopted by the people of Illinois in 1870 providing that "the Illinois and Michigan canal, or other canal or waterway owned by the state shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the state at a general election, and have been approved by a majority of all the votes polled at such election. The General Assembly shall never loan the credit of the state or make appropriations from the treasury thereof, in aid of railroads or canals; *Provided*, that any surplus earnings of any canal, waterway or water power, may be appropriated or pledged

for its enlargement or extension." The project for a canal connecting the waters of Lake Michigan and those of the Illinois River took form almost as soon as Illinois was admitted as a state. In 1822 the United States government made the first grant of land to the state for canal purposes. In 1848 the Illinois and Michigan canal was opened to navigation. The total cost of the canal was approximately \$6,500,000. From the time the canal was open until 1871 the title to the canal was vested in a board of trustees who managed the waterway for the benefit of its creditors. The canal had a prosperous career during this period, and in 1871 all the creditors were paid, the trust was dissolved and a balance of approximately \$96,000, was paid over to the state.¹

The provision against leasing or selling the canal was inserted in the constitution of 1870 primarily for the purpose of preventing railroads from securing the canal and reducing competition. The provision forbidding appropriation of money by the general assembly in aid of canals was inserted to prevent the canal from becoming a burden upon the state in case its expenses should exceed its revenues. The canal soon ceased to be prosperous and the general assembly fell into the practice of making appropriations from the state treasury to cover deficits. In 1904 the constitutionality of such appropriations came before the supreme court in the case of *Burke v. Snively*² and the court said: "We are of the opinion that the true meaning of the constitutional provision with reference to the canal is that the legislature should have power to operate it to the extent, and to the extent only, that the income of the canal would defray the expenses of operation, maintenance and preservation, and that no moneys shall be appropriated from the treasury of the state in aid of the operation, maintenance or preservation thereof, and that if the earnings of the canal produced a surplus appropriations of such surplus might be made to aid in the enlargement or extension of the canal should the legislature deem it wise to so appropriate such surplus". A review of the cases involving the separate section on canals will be found in the Annotated Constitution.

In 1908 the separate canal section was amended by inserting the word "maintenance" in the last clause of the original section after the word "enlargement", and by making express provision for the construction of a deep waterway or canal from the present water power plant of the sanitary district of Chicago at or near Lockport, to a point in the Illinois River at or near Utica, and bonds to an amount not to exceed \$20,000,000, were authorized for this purpose. Legislation of 1915 authorized the construction of the canal, but no action was taken under this legislation, and the work of construction is being undertaken under legislation of 1919.

Under the terms of Article IV, Section 18, of the constitution the general assembly enacted legislation in 1917 for a \$60,000,000 bond issue for a system of hard roads and the people approved the bond issue at the election of 1918. Legislation of 1919 also made further provisions regarding the use of money for the system of hard roads.

¹ Putnam, J. W., *Illinois and Michigan Canal, A Study in Economic History*. Chicago Historical Society's collections, Volume 10. 1918.

² 208 Ill. 328.

The statements just made with respect to the deep waterway and the system of hard roads indicate that the people of Illinois are now embarking upon two large projects of internal improvements. There has been a similar development in other states, and a number of constitutional amendments have expressly authorized bond issues for road construction, or have loosened constitutional restrictions as to state debt limits so as to permit undertakings by the state which would previously not have been permitted. A review of some of the new developments with respect to state enterprises will be found in Bulletin No. 1, pages 44-45.

The existing constitutional provisions in Illinois are clearly not so rigid as to prevent the undertaking of projects of internal improvements, if the people definitely desire that certain projects should be undertaken. However, attention should be called to the fact that the \$60,000,000 bond issue for good roads was authorized under Article IV, Section 18 of the constitution, which requires a popular vote of a majority of those voting for members of the general assembly; whereas the \$20,000,000 bond issue for the deep waterway required a constitutional amendment with a majority of all of those voting in a general election. If it is desired that projects of internal improvement be undertaken in the future, subject only to popular approval, it may be desirable that the methods of popular approval be made uniform with respect to the matter. The problem will also present itself of the relationship of the Illinois and Michigan canal to other projects of internal improvement, and in this connection the question may be raised as to whether the present constitutional provisions as to the Illinois and Michigan canal may not be unduly restrictive as to the operation of that canal in connection with the larger deep waterway.

There is probably no desire now that municipal corporations be authorized to loan their credit to railroads or other private corporations. However there is some demand for constitutional provisions which will make it possible for municipalities to own their local public utilities, and an effort will be made to obtain an alteration of the municipal debt limit so as to permit the accomplishment of such a purpose. The problem of municipal ownership of public utilities will be found discussed in Bulletin No. 4 where there is a chapter upon debt limitations, and in Bulletin No. 6 which is devoted to municipal home rule. A full review of the judicial decisions bearing upon the application of the municipal debt limit will be found in the Annotated Constitution.

IX. ILLINOIS CENTRAL RAILROAD.

Historical account of the Illinois Central provision. The Illinois Central railroad was chartered in 1851. Whenever the charter lines of the road crossed land owned by the state, the charter granted a right-of-way not exceeding 200 feet in width across these lands. In addition, the railroad was granted 2,595,000 acres of land received by the state from the federal government for railroad purposes. In return for these grants the railroad was required to pay 5% of its annual gross income to the state, and an annual tax was to be assessed by the auditor of public accounts upon all the corporate assets as determined by a statement of those assets filed annually by the company with the auditor. If the sum of the two taxes should not equal 7% of the annual income of the company, the company was required to pay 7% of its yearly income to the state in lieu of all other taxes both state and local.¹

The proposed constitution of 1862 contained a provision that "the general assembly of this state shall have no power to release, suspend, modify, alter, remit or in any way or manner impair the obligations of the Illinois Central Railroad Company to pay into the state treasury all sums of money secured to the state by the charter of said company, approved Feb. 10, 1851; nor to release, suspend, modify, alter, remit or in any manner impair any right of taxation of lien secured to the state by said charter".

The position of the Illinois Central Railroad was discussed fully in the constitutional convention of 1870.² Representatives of the counties through which the railroad operated wished to have the amount received by the state under the charter distributed among the counties in which the right-of-way lay, in view of the fact that those counties were compelled to forego the collection of taxes from the railroad. However, the opponents of this proposal finally prevailed and the section submitted to the people made the sums received from the company applicable solely to state purposes. The section of the constitution with respect to the Illinois Central Railroad was submitted to the people separately and was adopted by a vote of 147,032 to 21,310. The only counties in which a majority of the voters were opposed to the adoption of the section were Champaign, Fayette, Iroquois, Kankakee and Marion.

The section of the constitution relating to the Illinois Central Railroad Company has been the subject of a good deal of litigation in

¹ Charter of Illinois Central Railroad Company, Private Laws 1851, pp. 61-74. Brownson, H. G., History of the Illinois Central Railroad to 1870. University of Illinois studies in the social sciences, Vol. 4, Nos. 3 and 4 (1915). See also W. K. Ackerman, Historical Sketch of the Illinois Central Railroad, Chicago 1890.

² Proceedings and Debates, Constitutional Convention of 1870, pp. 1199-1202, and 1243-1256.

recent years. This litigation has related primarily to accounting methods in determining the 7% payment to be made from the gross receipts of the railroad. It should, of course, be borne in mind that the 7% gross receipts tax relates merely to the original charter lines of the railroad. The charter lines constitute a total mileage of 705.50, and comprise the line from Chicago to Cairo (364.73) and from Dunleth to Branch Junction (340.77).

Two important cases have passed upon questions involving the duty of the company to pay 7% upon the gross receipts from its charter lines. These cases are *State v. Illinois Central Railroad Company* (246 Ill. 188. 1910), and *People v. Illinois Central Railroad Company* (273 Ill. 220. 1916). A review of the cases bearing upon the Illinois Central section will be found in the Annotated Constitution. For a full review of the issues involved in the case decided in 246 Ill. see a pamphlet prepared by Attorney General W. H. Stead on the Illinois Central case.

Problems of collection. The cases just referred to outline in detail some of the problems involved in the segregation of the receipts of the charter lines from the receipts of the Illinois Central Railroad system as a whole, and present in detail a number of the problems which have arisen for decision. A large number of the points at issue as between the railroad and the state have been settled by these two decisions. Since 1907 there has been a good deal of expenditure on the part of the state in connection with the collection of the Illinois Central gross receipts payments, and it has been thought worth while to give a brief statement here of appropriations since 1907. Some appropriations have been made directly to the governor, but the appropriations have in the main been made to the attorney general. In the table, original appropriations alone have been counted and reappropriated items have merely been noted but not included in the totals.

Appropriations for Illinois Central Litigation.

Year	Attorney General	Governor	Total
1907	\$50,000	\$100,000	\$150,000
1909	(An appropriation of \$55,000 was made for this purpose and for submerged lands litigation)	Unexpended balance reappropriated	
1911	\$35,000 and unexpended balance of 1909 appropriation.	Unexpended balance of \$100,000	35,000
1913	\$100,000 and unexpended balance.	Reappropriates \$49,905.90	100,000
1915	\$150,000	.....	150,000
1917	100,000	.....	100,000
1919	100,000	.....	100,000
	Total.....	.....	\$635,000

Amounts received from Illinois Central railroad. A table is given below of the amounts paid into the state treasury by the Illinois Central Railroad for a period beginning with the year 1855.

Amounts Paid to the State.

The Illinois Central has paid into the state treasury the following sums:

1855	\$ 29,751.59	1888	\$ 418,955.89
1856	77,631.66	1889	460,244.65
1857	145,645.84	1890	486,281.13
1858	132,005.53	1891	538,005.67
1859	132,104.46	1892	589,486.02
1860	177,557.22	1893	753,067.24
1861	177,257.81	1894	553,911.49
1862	212,174.60	1895	614,988.17
1863	300,394.58	1896	624,550.83
1864	415,514.04	1897	584,532.74
1865	496,489.84	1898	657,032.81
1866	427,075.75	1899	696,047.35
1867	444,007.74	1900	784,093.01
1868	428,397.48	1901	844,133.47
1869	464,933.31	1902	942,061.19
1870	464,584.52	1903	1,078,790.52
1871	463,512.91	1904	1,062,571.86
1872	442,856.54	1905	1,085,233.17
1873	428,574.00	1906	1,192,425.01
1874	394,366.46	1907	1,238,536.12
1875	375,766.02	1908	1,093,106.44
1876	356,005.58	1909	1,152,669.34
1877	316,351.94	1910	1,217,927.84
1878	320,431.71	1911	1,239,484.24
1879	326,477.38	1912	1,219,160.54
1880	368,348.66	1913	1,355,178.98
1881	384,582.52	1914	1,379,880.57
1882	396,036.11	1915	1,365,607.89
1883	388,743.19	1916	1,617,918.62
1884	356,679.62	1917	1,902,440.57
1885	367,788.92	1918	2,259,740.64
1886	378,714.50	1919	2,432,115.87
1887	414,374.57		
Total.....			\$44,445,316.48

(These statistics are for the fiscal years ending October 31).

Comparison of payments of Illinois Central to the state with taxation of other railroads in Illinois. In any comparison of payments into the state treasury by railroads in this state, it should be

borne in mind that the Illinois Central Railroad not only received exemption from state and local taxation in return for the 7% gross receipts payment, but also a large amount of land. In Brownson's History of the Illinois Central Railroad he says that "by 1874 approximately two million two hundred thousand acres had been sold" which made an average receipt per acre of a little over twelve dollars including expenses, or eleven dollars net receipts. This grant of two million five hundred thousand acres of land has been a source of a great profit to the company, and at the same time has been managed well and sold to the best advantage of the community as a whole as well as of the company." On page 139 of Brownson's study will be found a table giving the receipts of the land office from 1851 to 1907 as \$29,480,292.82.

So far as actual annual taxation is concerned it is difficult to make a precise comparison with other railroads. A table is here inserted which seeks to give, for several years, a comparison of Illinois Central Railroad payments on its charter lines with the payments by other railroads. In connection with this table it must, however, be borne in mind that terminal roads at Chicago and East St. Louis pay a higher tax per mile than do other roads and more per mile in proportion to gross earnings than do the Illinois Central charter lines. A comparison of tax per mile of main line track is really of little value. The Illinois Central charter lines are through lines of large earning capacity, and the only mileage comparison of any value would be that of the Illinois Central charter lines with the principal lines of other roads. The main track of other roads includes branch lines with small earnings; and the corresponding subsidiary lines of the Illinois Central are not included in the charter lines.

Attention may also be called to the fees imposed by the corporation and public utilities laws; and the new franchise tax on corporations established in 1919. Such fees have in the past been paid by the Illinois Central as well as other railroads; and the Attorney General has held that the new franchise tax is also applicable to the Illinois Central railroad.

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Railroad Taxation in Illinois.^a

	Main track miles.	Equalized assessed valuation.	Gross earnings in Illinois.	Total taxes charged.	Rate of taxes.		
					On \$1 assessed valuation.	On \$1 gross earnings.	Per mile main track.
1914					Percent.	Per cent.	
All other steam roads..	11,350	\$200,794,695	\$196,288,374	\$7,860,180	3.91	4.	\$ 692
I. C. charter lines.....	705	.....	19,712,579	1,379,880	.....	7.	1,957
1915							
All other steam roads..	11,364	201,091,647	206,460,681	8,577,396	4.26	4.15	754
I. C. charter lines.....	705	.....	19,209,765	1,344,683	.....	7.	1,907
1916							
All other steam roads...	11,288	204,438,757	216,894,570	9,742,991	4.77	4.59	863
I. C. charter lines.....	705	.....	21,443,666	1,501,070	.....	7.	2,129
1917							
All other steam roads...	11,239	202,241,294	171,965,071	10,358,205	5.12	6.02	921
I. C. charter lines.....	705	.....	27,177,722	1,902,440	.....	7.	2,698

^a Compiled from "Tabular statement of the amount of taxes charged for collection against the Equalized Assessed valuation of Railroad Property," issued by the Auditor of Public Accounts. The amounts for the Illinois Central Railroad do not agree exactly with the figures in the biennial reports of the Auditor of Public Accounts, as shown on p. 1185.

Constitutionality of Illinois Central gross receipts tax. Professor Henry Schofield in an article in the *Illinois Law Review* several years ago raised an issue as to the constitutionality of the Illinois Central gross receipts payments, on the ground that this payment might be held to be a burden upon interstate commerce. His view was that the tax provisions of the charter are broad enough to comprehend gross receipts from interstate as well as from domestic commerce, and the charter requirement is construed to apply to receipts from both sources. In reply to this article Dean James P. Hall took the view that the gross receipts provision was constitutional. No issue of federal constitutionality of the gross receipts provision has been made and so far as can now be discovered none is likely to be made.³

³ Henry Schofield, *The State Tax on Illinois Central Gross Receipts, and the Commerce Power of Congress*, *Illinois Law Review*, I, 440. J. P. Hall, *The State Tax on Illinois Central Gross Receipts—Another View*, *Illinois Law Review*, II, 21.

CONSTITUTIONAL CONVENTION

BULLETIN No. 15

Bill of Rights, Education, Militia, Suffrage and Elections, Preamble, Boundaries, Distribution of Powers, Schedule



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I. SUMMARY.

This bulletin will seek to deal with certain subjects that have not been dealt with in other bulletins issued for the use of the constitutional convention. It will confine itself primarily to problems raised by the bill of rights and to related problems involved in other parts of the constitution. In connection with certain suffrage provisions of the bill of rights, there will be a brief discussion also of Art. VII of the constitution. In connection with the subject of religious liberty there will be some discussion of Art. VIII dealing with education; and in connection with guarantees regarding military matters, there will be a brief discussion of Art. XII of the constitution. The preamble, the article on boundaries, the article on separation of powers and the schedule require little comment beyond what will be found in the Annotated Constitution.

A number of important matters with respect to the bill of rights have been dealt with in other bulletins of this series. The subjects of jury trial and of the grand jury will be found fully discussed in Bulletin No. 10, dealing with the judicial department. Problems as to the extension of the power of eminent domain and excess condemnation are considered in Bulletin No. 7. The problem of injunctions in labor cases is fully discussed in Bulletin No. 14, devoted to economic and industrial problems, and further reference to this subject is unnecessary in this bulletin. The question as to the extent to which social and industrial legislation has been prevented by interpretation of the present constitution is to some extent covered in the bulletin dealing with the judicial department (Bulletin No. 10), where a chapter will be found upon the power of the courts to declare laws unconstitutional; and in Bulletin No. 8, on the legislative department, where a chapter will be found on legislative powers. With respect to certain matters upon which the constitutionality of legislation may be doubtful without a change in the present constitutional text, a discussion will be found in Bulletin No. 14, dealing with social and industrial problems.

II. BILL OF RIGHTS.

The bill of rights of the constitution of Illinois is similar in general to the bills of rights in other state constitutions. No questions whatever are raised by a number of the provisions of the bill of rights, and such provisions will probably be carried forward into a new constitution without change. The sections of the bill of rights which may present the most serious questions to the constitutional convention are discussed in other bulletins in this series. The sections which will probably present the most serious problems are Section (5) dealing with the jury, Section (8) dealing with the grand jury, Section (9) dealing with certain guarantees regarding criminal trials (including the jury in criminal cases), and Section (13) dealing with eminent domain. All of these matters have been fully discussed in other bulletins, and it is sufficient here merely to call attention to this fact. This discussion will limit itself to certain other matters which are perhaps less important, but which may receive consideration in the constitutional convention.

Religious liberty and aid to sectarian institutions. Section 3 of Article 2 contains a broad guarantee of religious liberty, and no suggestion has been made regarding a change in the language of this section. This section must, however, be read in relationship with Article VIII, Section 3, of the constitution, which provides that:

"Neither the general assembly nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation or pay from any public fund whatever anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian purpose."

The language of Article VIII, Section 3, is broad and inclusive, and no question would arise regarding a possible change in this language, were it not for recent decisions of the Illinois supreme court. The real problem which presents itself is that as to whether a county or other public corporation may commit its wards to sectarian institutions, paying such institutions for the care of such wards. In the case of *County of Cook v. Industrial School for Girls*, 125 Ill. 540 (1888), a statute was involved under which a girl was to be committed to the Industrial School for Girls at Chicago in said county, to be in such

school kept and maintained until she arrives at the age of eighteen years, unless sooner discharged therefrom according to law. No Chicago Industrial School for Girls had actually been established as a separate institution and girls were committed under the act to two institutions which were admittedly sectarian. The Board of Commissioners of Cook county declined to pay bills for girls committed to these sectarian institutions, on the ground that such payment would be in violation of Article VIII, Section 3, of the constitution. In the above case, involving an action to recover for the care of children by sectarian institutions, Judge Magruder said:

"It cannot be said that a contribution is no aid to an institution because such contribution is made in return for services rendered or work done. The school is aided by the patronage of its pupils, even if they do pay for their tuition. Because the customers of a merchant pay for their goods, it is none the less true that his business is aided by their custom. The act under discussion is entitled 'An act to aid Industrial Schools for Girls'. If the payment by the county of \$10 per month on account of each dependent girl committed to such a school is no aid to the school simply because 'tuition, maintenance and care' are furnished in return for such payment, then the act is not properly entitled. . . . It is an untenable position that public funds may be paid out to help support sectarian schools, provided only such schools shall render a *quid pro quo* for the payments made to them. The constitution declares against the use of public funds to aid sectarian schools independently of the question whether there is or is not a consideration furnished in return for the funds so used."

It would have been possible to have reached the same conclusion in the Chicago Industrial School for Girls case without a square pronouncement upon the question of aid to sectarian institutions.

The problem of committing public wards to a sectarian institution came up again in the case of *Dunn v. Chicago Industrial School for Girls*, 280 Ill. 613 (1917). In this case an injunction was sought to prevent the payment of a sum of money for the care and maintenance of girls committed to the Chicago Industrial School for Girls by the Juvenile Court of Cook county, upon the ground that making a payment of an appropriation would violate Article VIII, Section 3, of the constitution. The facts showed that the institution was under the control and management of the Roman Catholic Church, and that the children committed to the school by the Juvenile court were children of Catholic parents and members of that church. The school was to receive \$15 per month for each girl, and this was said to be less than the cost of maintaining a girl in a similar state institution, and less than the cost of food, clothing, training, medical care and tuition furnished to the wards of the county, the institution making up the balance through private sources. The court said:

"It would be contrary to the letter and spirit of the constitution to exclude from religious exercises the members of any denomination when the state assumes their control, or to prevent children of members from receiving the religious instruction which they would have received at home. The constitutional prohibition against furnishing aid

or preference to any church or sect is to be rigidly enforced, but it is contrary to fact and reason to say that paying less than the actual cost of clothing, medical care and attention, education and training in useful arts and domestic sciences, is aiding the institution where such things are furnished."

The position in this case was distinguished from that in 125 Ill., by virtue of the view that the industrial school in that case had no power to relinquish the care and guardianship of girls committed to it (the school in that case being shown to have no actual existence), and also by virtue of the fact that there was no showing in that case that the sectarian institution would not receive aid from the payments sought to be made.

A view similar to that in the case just discussed will be found in *Dunn v. Addison Manual Training School for Boys*, 281 Ill. 352 (1917), *Trost v. Ketteler Manual Training School for Boys*, 282 Ill. 504 (1918), and *St. Hedwig's Industrial School for Girls v. County of Cook*, 289 Ill. 432 (1919).

These cases may raise an issue before the constitutional convention as to whether the constitutional language shall be so changed as to prevent the use of sectarian institutions for public purposes, even though the sectarian institutions actually sustain a loss in the performance of the service rendered to the public.

In connection with this matter, attention may be called to the fact that in Massachusetts, aid to sectarian institutions was not prohibited by the constitution before 1917. This issue was one of the most important of those presented in the constitutional convention in Massachusetts in 1917. A full discussion of the situation in Massachusetts will be found in Massachusetts Constitutional Convention Bulletin No. 17,¹ and a full debate upon this matter will be found in the Debates of the Massachusetts Constitutional Convention, Volume 1, pages 44 to 363. This problem was not a new one in Massachusetts. An amendment regarding the matter had been proposed by the constitutional convention of 1853, but failed. However, an identical proposal was submitted by the Massachusetts general court in 1855 and adopted by the people. This amendment provided:

"That all moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to and expended in no other schools than those which are conducted according to law under the order and superintendence of the authorities of the town or city in which the money is to be expended, and such money shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools."

The supreme judicial court of Massachusetts took the view that the language of this amendment did not prohibit "appropriations for higher educational institutions, societies or undertakings under sectarian or ecclesiastical control".

¹ Bulletin No. 17, Appropriations for Sectarian and Private Purposes.

In 1917 the Massachusetts constitutional convention submitted a proposal of amendment, which was adopted by the people of Massachusetts. This amendment seems to make it perfectly clear that public funds may not be used for any higher institution of education under sectarian control, but the amendment adds that "nothing herein contained shall be construed to prevent the commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries or institutions for the deaf, dumb or blind, not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be, in whole or in part, unable to support or care for themselves". In large part, it will, therefore, be seen that the Massachusetts constitutional amendment authorizes the practice now approved by the supreme court of Illinois.

The subject of Bible readings in the schools may also be presented to the convention. In the case of *People ex rel. Ring v. Board of Education*, 245 Ill. 334 (1910) the supreme court took the view that the reading of the Bible in the public schools constitutes sectarian instruction in violation of Article VIII, Section 3, of the constitution. Justices Hand and Cartwright dissented. A full review of the cases upon Bible reading in the public schools will be found in an article by Professor Henry Schofield, in the *Illinois Law Review*, Vol. VI, pages 19, 71 (1911).

With respect to the matter of religion, attention may also be called to the fact that the preamble to the constitution definitely recognizes religion, and that Article 9, Section 3, of the constitution expressly authorizes the exemption from taxation of property used exclusively for religious purposes. The question of tax exemption may also come before the constitutional convention, and in the *Annotated Constitution* will be found a full review of the decisions bearing upon what property is held to be used exclusively for religious purposes, so that it may be exempted from taxation.

Comment upon failure of accused to testify in his own behalf. In connection with Article 2, Section 10, of the constitution, proposal will probably be made that comment be permitted upon the failure of an accused person to testify in his own behalf. Ohio, in 1912, adopted a constitutional amendment, which provides that "no person shall be compelled in any criminal case to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel". A similar proposal was made in the Massachusetts constitutional convention, but was rejected after a brief debate, in which opposing views were well presented.²

In connection with the proposal that comment be permitted upon the failure of an accused to testify in his own behalf, some effort may

² Debates in Massachusetts Constitutional Convention, 1917-1918, Vol. I, 375-380.

be made to prohibit by constitutional change the so-called "third degree". It is questionable, however, whether any constitutional provision would effect any actual change in the method of dealing with prisoners by police and other authorities. The privilege of commenting upon the failure of the accused to testify in his own behalf is oftentimes urged as a means of reducing the incentive of officials to obtain confessions from an accused person by unlawful means.

Capital punishment. The effort to abolish capital punishment will almost certainly come before the constitutional convention. The matter of capital punishment is one as to which legislative power is now sufficient, and bills for the abolition of capital punishment have been before the Illinois general assembly for a number of years, and have failed of enactment. A bill was passed by the two houses of the general assembly in 1917 to remove the death penalty upon conviction of the crime of murder, and to repeal the sections of the statute prescribing the manner of inflicting the death penalty. This bill was vetoed by the governor. The veto was based partly upon the ground that a life convict guilty of murder would, if the bill were enacted, be subject to no penalty, and also that the period of war was an undesirable one for the enactment of such legislation.³

Oregon, in 1914, adopted a constitutional amendment abolishing capital punishment, but in the other states in which capital punishment has been abolished, this action has been taken by legislative enactment. A proposal for the abolition of capital punishment was made in the Massachusetts constitutional convention, and a discussion of this subject will be found in the debates of that convention, Volume 1, pages 439-449.⁴

Libel. Section 4 of Article II provides that "in all trials for libel, civil and criminal, the truth when published with good motives and for justifiable ends, shall be a sufficient defense". This clause has been applied in a recent important decision of the supreme court (*Ogren v. Rockford Star Printing Co.* 288 Ill. 405, 1919), and this decision has been discussed in recent issues of the *Illinois Law Review* (October, December, 1919, Vol. XIV, pp. 226, 378). An effort may be made to alter the constitutional rule which makes the truth a defense only "when published with good motives and for justifiable ends".

Constitutional provisions duplicating those of the federal constitution. Section 2 of the bill of rights duplicates a similar limitation upon the states in the Fourteenth amendment of the Constitution of the United States, and Section 14 duplicates the prohibitions of the

³ Governor's Veto Messages of Senate and House Bills, Fiftieth general assembly, 1917, page 3.

⁴ See also Massachusetts Constitutional Convention Bulletin No. 5. The abolition of capital punishment.

federal constitution against the state enactment of ex post facto laws or laws impairing the obligation of contracts. There has been some discussion in this country of the desirability of having but one set of broad constitutional limitations upon the states. If there was but one set of broad limitations such as that in the due process of law clause, the federal limitation would then receive uniform construction for the whole country. Some difficulty has been occasioned in Illinois and other states by virtue of the fact that legislation may be held by the United States courts not to be in conflict with the due process of law clause of the federal constitution, but may be held by the state court to be in conflict with the identical clause of the state constitution. In such case the decision of the state supreme court is final, because it is a decision construing the language of the state constitution, and so construing such language as not to raise a federal constitutional question. A full discussion of the problem here suggested will be found in a chapter on legislative powers in Bulletin No. 8 of this series, and it is sufficient here merely to raise the question. If the policy were adopted of omitting from the state constitution guarantees which duplicate those in the constitution of the United States, attention should at the same time be called to the fact that Article 4, Section 22, of the constitution of Illinois has received a construction equally as broad as the due process of law clause, insofar as that section prohibits special or local laws granting special privileges, immunities or franchises.

Proposed clause guaranteeing individual initiative. The constitution of Illinois contains two guarantees which have been construed broadly so as to prohibit legislation which the court may regard as unduly restrictive of individual rights. As has just been indicated, these clauses are the due process of law clause and the clause prohibiting special legislation conferring special privileges, immunities and franchises. These broad clauses probably meet all the requirements that can be met by broad constitutional guarantees. As has been indicated in the discussion under legislative powers in Bulletin No. 8, these broad guarantees have not been defined by the courts, and are probably incapable of judicial definition. The things forbidden by the guarantees change with changing economic and social conditions, and the courts may because of such changes hold a legislative enactment proper at one time, even though the same or a similar enactment has been held improper in an earlier period. Thus the courts apply these broad guarantees (although they have never so indicated) to meet conditions as they present themselves, varying to some extent the actual content of the guarantees with changing conditions.

The suggestion has been made that there be embodied in the bill of rights a statement that every individual should be permitted to use his capacities to the furthest possible extent, independently of legislative prohibition. Such a principle, if announced in the constitution, would probably do no harm, but would also probably accomplish little good. Statements of broad principles in the constitution have usually had little effect, unless such principles were capable of fairly definite

judicial application, and it is probable that the matter here dealt with would not be capable of such judicial application. Not only this, but such a proposal, if embodied in the constitution may be capable of a double interpretation. It may if applied by the courts be held to inhibit legislative action in numerous cases, although it probably would not lead to the annulment of legislation, which might be held proper under the due process of law clause. On the other hand, such a provision might be held to justify legislative action intended to give an equal opportunity to each citizen in the acquisition of education or facilities for the use of such capacities as he might possess; and might, therefore, be employed as a means of aiding the socialistic ideal.

III. EDUCATION.

The matter of religion in the schools has been dealt with in an earlier part of this bulletin. Some other matters are likely to come before the convention with respect to the article of the constitution dealing with education.

There will undoubtedly be some discussion of the proposal for a constitutional recognition of the University of Illinois, or of both the university and the normal schools. The University of Illinois is now controlled entirely by statutory enactments, although an incidental reference to the university is contained in Article VIII, Section 2, with respect to lands, moneys or other property donated, granted or received for school, college, seminary or university purposes. The university is now subject to the management and control of a board of trustees, composed of the governor, the superintendent of public instruction, and nine other trustees, of whom three are elected every two years, to serve for a six year term. The elective trustees are voted for by the voters of the state at the biennial general elections upon the same ballots with the state officers to be chosen at such elections.

In 1911 provision was made for the levy of a one mill state tax for the support of the University of Illinois, this tax being based upon the principle of taxing property at one-third of its value. In 1919, when the basis of taxation was raised to one-half of full value, this tax was proportionately reduced to two-thirds of one mill. In the report of the Efficiency and Economy Committee¹ will be found a full statement regarding the organization of boards for the control of state universities. The more common practice is to have appointive boards. However, a number of states have constitutional provisions regarding the state university. Perhaps the most important university controlled by an elective board is that of Michigan, whose constitution provides that "there shall be a board of regents of the university, consisting of eight members, who shall hold the office for eight years. There shall be elected at each regular biennial spring election two members of such board. When a vacancy shall occur in the office of regent, it shall be filled by appointment of the governor." Boards of regents or of trustees for state universities are also made elective by constitutional provisions in Colorado and Nebraska.

With respect to the county superintendent of schools, the constitution speaks of election, but provides that the manner of election shall be prescribed by law. The issue has never presented itself, but the use of the word "election", united with the uniform practice of electing that officer by popular vote under the constitution of 1870, may make

¹ Report of Efficiency and Economy Committee, 1915, pages 439-440.

it doubtful as to whether the county superintendent could be made appointive if this were desired. With respect to any proposal for consolidation of city and county functions, either within the city of Chicago or within other areas of the state, attention should also be called to the fact that the constitutional provision regarding a county superintendent would in case of such consolidation make it necessary to continue a county school officer in addition to a city school superintendent.

In discussing constitutional provisions regarding education it should be noted that the state superintendent of public instruction is provided for by article V, section 1, of the constitution.

Article VIII, Section 4, provides that no teacher, state, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture used or to be used in any school in this state, with which such officer or teacher may be connected, under such penalties as may be provided by the general assembly. Some effort may be made to change this constitutional provision, inasmuch as it substantially prohibits the use in Illinois of text books prepared by any school officer within this state. It may be possible to prevent the abuses aimed at without unduly restricting the preparation of text books within the limits of the state. In any case, it will be desirable to coordinate with this section the provisions of Article IV, Section 15, and Article IV, Section 25. The provisions regarding interest in contracts now do not cover the whole subject, and may be found in three parts of the constitution.

Efforts will probably be made to add specific constitutional provisions regarding kindergartens, vocational education or other types of educational methods. In connection with this matter, it should probably be said that Article VIII, Section 1, of the constitution lays down as broadly as is possible the duty of the general assembly to provide "a thorough and efficient system of free schools". (Powell v. Board of Education, 97 Ill. 375. 1881). Details as to elements constituting such a system of free schools may lead to judicial implications limiting the present full power conferred upon the general assembly. Here, as elsewhere in a constitution, details are dangerous from the standpoint of judicial construction, and it is usually true that details as to an educational system are likely to be quickly outgrown if placed in a constitution. The changing of such details then becomes a difficult matter.

In connection with the problem of education, attention should be called to Section 18 of the schedule by which "all laws of the State of Illinois and all official writings and the executive, legislative and judicial proceedings shall be conducted, preserved and published in no other than the English language". It seems unnecessary that anything should be added to this language, for the whole matter can now be adequately dealt with by statute, although attention should be called to the possibility of a proposal of amendment being made requiring that all instruction in schools be in the English language. Proposals of this character, in connection with the so-called Americanization movement, led in 1919 to the enactment of a statutory provision which reads as follows:

"Because the English language is the common as well as official language of our country, and because it is essential to good citizenship that each citizen shall have or speedily acquire, as his natural tongue, the language in which the laws of the land, the decree of the courts, and the proclamations and pronouncements of its officials are made, and shall easily and naturally think in the language in which the obligations of his citizenship are defined, the instruction in the elementary branches of education in all schools in Illinois shall be in the English language. *Provided*, that this shall not apply to vocational schools where the pupils have already received the required instruction in English during the current year." (Laws of 1919, pp. 917-918).

The teaching of foreign languages under earlier statutes was sustained in the Powell case, cited above, and the enactment of 1919 appears not to forbid such teaching.

IV. MILITIA.

No suggestions have been received as to changes that may be proposed in Article XII of the constitution dealing with the militia. In connection with Article XII, attention should, of course, be given also to Section 15 and 16 of Article II. Most of the provisions of the article dealing with militia merely lay down principles which, in any case, would be followed, and the constitution with respect to this matter imposes no serious restrictions upon legislative action. Perhaps, however, proposals may be made (1) to establish general military training by constitutional provision and (2) to lay down some constitutional rule as to the relationship between the state and national governments in military affairs.

V. SUFFRAGE AND ELECTIONS.

Article VII should be considered in connection with the provisions of Article II, Section 18, that "all elections shall be free and equal".

With respect to Section 1 of Article VII, a material change will be proposed, granting suffrage to women. It will be unnecessary to discuss here the subject of woman suffrage, as a statement regarding the situation in Illinois and in other states will be found in the pamphlet upon the "Constitutional Convention in Illinois", second edition, pages 107-111. The rapid progress being made toward the ratification of the proposed federal amendment will probably result in full suffrage for women in this state in the near future; although a proposed amendment to the constitution of Illinois, if promptly adopted, may come into effect before the adoption of the federal amendment.¹

With respect to Section 1, the question may also present itself as to whether there is need for continuing the provisions regarding those who were electors in the year 1848. This provision was adopted for the purpose of saving the right to vote to certain persons who would not otherwise have been qualified under the constitutions of 1848 and 1870, and is probably now unnecessary, although its retention would do no harm, and there may be a few cases of voters qualified before 1848 who would not be qualified under present constitutional provisions. The clause in this section with respect to naturalization is now unnecessary.

Certain other questions may present themselves with respect to the suffrage article. In connection with Section 1, the matter of compulsory voting may be urged. A discussion of this subject will be found in the Massachusetts constitutional convention Bulletin No. 24. An amendment was proposed by the Massachusetts constitutional convention and adopted by the people of that state in 1918 that "the general court shall have authority to provide for compulsory voting at elections, but the right of secret voting shall be preserved".

In connection with Article VII, Section 2, it is now clear that the requirements of a ballot means a requirement of secret voting. The supreme court of this state has held that the provisions that "all votes shall be by ballot" does not forbid the use of a voting machine, and that the primary purpose of the provision is to require secrecy in voting. Amendments have been adopted to some constitutions expressly authorizing the use of voting machines, in order to overcome decisions of courts against the use of such machines. However, there is no difficulty of this character in Illinois, if it is desired to use voting ma-

¹ A full review of woman suffrage in the United States will be found also in Massachusetts constitutional convention Bulletin No. 3, Woman Suffrage in the United States.

chines, and the requirement of secrecy of voting is sufficiently preserved by the existing constitutional provisions.

In connection with Article VII, Sections 4 and 5, it may be deemed proper to place in the constitution an express provision authorizing absent voting. However, such a provision seems unnecessary and there is little doubt as to the constitutionality of present absent voting legislation in this state.

Article VII, Section 6, provides that no person "shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States and who shall not have resided in this state one year next preceding the election or appointment". In the case of *People v. McCormick*, 261 Ill. 413, the supreme court has said:

"It may be true that many persons having constitutional qualifications are wholly unfit to discharge the duty of many offices within the state, but if the legislature possesses the power to vary the constitutional qualifications for office by adding new requirements or imposing additional limitations, then eligibility to office and freedom of elections depend not upon constitutional guarantees, but upon legislative forbearance. If the legislature may alter the constitutional requirements, its power is unlimited, and only such persons, may be elected to office as the legislature may permit. In our judgment, when the constitution undertakes to prescribe qualifications for office its declaration is conclusive of the whole matter, whether in affirmative or negative form . . . The expression of the disabilities specified excludes others. The declaration in the constitution that certain persons are not eligible to office implies that all other persons are eligible."

Some change must, therefore, be made in this section, if it is desired to permit the general assembly to prescribe specific qualifications for certain offices.

Article VII, Section 7., says that "the general assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes". In accordance with the general rules of constitutional construction, as laid down in the *McCormick* case just referred to, this specification is also exclusive, and constitutional change will be necessary if it is desired to permit the exclusion from the suffrage of other persons than those convicted of infamous crimes. (*Christie v. People*, 206 Ill. 337 1903).

The constitution of some states contain expressions requiring legislation to preserve the purity of the ballot or prevent corrupt practices. Such provisions are of little value, for legislative power is ample without them.

VI. PREAMBLE, BOUNDARY, DISTRIBUTION OF POWERS, AND SCHEDULE.

Little need be said about any of these subjects. No change has been suggested with respect to the preamble or with respect to the article dealing with state boundaries. The principle of the separation of powers as stated in the constitution is in terms subject to such exceptions as may be made elsewhere in the constitution, and no change in this article is necessary, even though specific changes may be made in the actual powers of the three departments.

A schedule is, of course, necessarily adapted to each specific constitution, and changes in the schedule are necessary to adjust existing conditions to a new constitution if one is adopted or to constitutional amendments if such amendments make material changes in existing constitutional provisions. A number of the sections of the schedule are obsolete. A number of the sections can be used in a new constitution without material change. One provision of the schedule (Section 18) is a permanent provision, and should properly not be in the schedule, but should be elsewhere among the permanent provisions of the constitution.

APPENDIX—ILLINOIS CONSTITUTIONAL PROVISIONS.

PREAMBLE

We, the People of the State of Illinois—grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations—in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity, do ordain and establish this Constitution for the State of Illinois.

ARTICLE I—BOUNDARIES

The boundaries and jurisdictions of the State shall be as follows, to-wit: Beginning at the mouth of the Wabash River, thence up the same, and with the line of Indiana to the northwest corner of said State; thence east with the line of the same state, to the middle of Lake Michigan; thence north along the middle of said lake to north latitude forty-two degrees, and thirty minutes, thence west to the middle of the Mississippi River, and thence down along the middle of that river to its confluence with the Ohio River, and thence up the latter river along its northwestern shore to the place of beginning: *Provided*, that this State shall exercise such jurisdiction upon the Ohio River as she is now entitled to, or such as may hereafter be agreed upon by this State and the state of Kentucky.

ARTICLE II—BILL OF RIGHTS

§ 1. All men are by nature free and independent, and have certain inherent and inalienable rights—among these are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

§ 2. No person shall be deprived of life, liberty or property without due process of law.

§ 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby

secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

§ 4. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; and in all trials for libel, both civil and criminal, the truth when published with good motives and for justifiable ends, shall be a sufficient defense.

§ 5. The right of trial by jury, as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace, by a jury of less than twelve men, may be authorized by law.

§ 6. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the person or things to be seized.

§ 7. All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

§ 8. No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army and navy, or in the militia, when in actual service in time of war or public danger: *Provided*, that the grand jury may be abolished by law in all cases.

§ 9. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation, and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

§ 10. No person shall be compelled in any criminal case to give evidence against himself, or to be twice put in jeopardy for the same offense.

§ 11. All penalties shall be proportioned to the nature of the offense; and no conviction shall work corruption of blood or forfeiture of estate; nor shall any person be transported out of the State for any offense committed within the same.

§ 12. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases where there is strong presumption of fraud.

§ 13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by law.

The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

§ 14. No *ex post facto* law, or law impairing the obligation of contracts, or making any irrevocable grant of special privilege or immunities, shall be passed.

§ 15. The military shall be in strict subordination to the civil power.

§ 16. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war except in the manner prescribed by law.

§ 17. The people have the right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances.

§ 18. All elections shall be free and equal.

§ 19. Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay.

§ 20. A frequent recurrence to the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

ARTICLE III—DISTRIBUTION OF POWERS

The powers of the government of this State are divided into three distinct departments—the Legislative, Executive and Judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

ARTICLE VII—SUFFRAGE

§ 1. Every person having resided in this State one year, in the county ninety days and in the election district thirty days next preceding any election therein; who was an elector in this State on the first day of April, in the year of our Lord, one thousand eight hundred and forty-eight, or obtained a certificate of naturalization, before any court of record in this State, prior to the first day of January, in the year of our Lord, one thousand eight hundred and seventy, or who shall be a male citizen of the United States, above the age of 21 years, shall be entitled to vote at such election.

§ 2. All votes shall be by ballot.

§ 3. Electors shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections and in going to and returning from the same. And no elector shall be required to do military duty on the days of election, except in time of war or public danger.

§ 4. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State, or in the military or naval service of the United States.

§ 5. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

§ 6. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding the election or appointment.

§ 7. The General Assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes.

ARTICLE VIII—EDUCATION

§ 1. The General Assembly shall provide a thorough and efficient system of free schools whereby all children of this State may receive a good common school education.

§ 2. All lands, moneys, or other property, donated, granted or received for school, college, seminary or university purposes, and the proceeds thereof shall be faithfully applied to the objects for which such gifts or grants were made.

§ 3. Neither the General Assembly nor any county, city, town, township, school district or other public corporation shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the State or any such public corporation to any church or for any sectarian purpose.

§ 4. No teacher, State, county, township or district school officer shall be interested in the sale, proceeds or profits of any book, apparatus or furniture, used or to be used in any school in this State, with which such officer or teacher may be connected, under such penalties as may be provided by the General Assembly.

§ 5. There may be a county superintendent of schools in each county, whose qualifications, powers, duties, compensation and time and manner of election and term of office shall be prescribed by law.

ARTICLE XII—MILITIA

§ 1. The militia of the State of Illinois shall consist of all able-bodied male persons, resident in the State, between the ages of 18 and 45, except such persons as now are or hereafter may be exempted by the laws of the United States or of this State.

§ 2. The General Assembly, in providing for the organization, equipment and discipline of the militia, shall conform as nearly as

practicable to the regulations for the government of the armies of the United States.

§ 3. All militia officers shall be commissioned by the Governor, and may hold their commissions for such time as the General Assembly may provide.

§ 4. The militia shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters and elections, and in going to and returning from the same.

§ 5. The military records, banners and relics of the State shall be preserved as an enduring memorial of the patriotism and valor of Illinois, and it shall be the duty of the General Assembly to provide by law for the safe-keeping of the same.

§ 6. No persons having conscientious scruples against bearing arms shall be compelled to do militia duty in the time of peace: *Provided*, such person shall pay an equivalent for such exemption.

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